



ADMINISTRATIVE AND FINANCE COMMITTEE
THURSDAY, MARCH 10, 2016– 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

The meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or Limited English Proficiency services are needed in order to participate in the public meeting, requests should be made through the Recording Secretary at least three (3) business days prior to the Committee Meeting. The Recording Secretary's telephone number is 909-379-7110 (voice) or 909-384-9351 (TTY), located at 1700 West Fifth Street, San Bernardino, California. If you have comments about items on the agenda or other general concerns and are not able to attend the meeting, please mail them to Omnitrans at 1700 West Fifth Street, San Bernardino, California, Attention Board Secretary. Comments may also be submitted by email to BoardSecretary@omnitrans.org.

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Committee Meeting: Thursday, April 14, 2016, 8:00 a.m.
Omnitrans Metro Facility Board Room

C. COMMUNICATIONS FROM THE PUBLIC

This is the time and place for the general public to address the Board for items that are not on the agenda. In accordance with rules applicable to meetings of the Administrative & Finance Committee, comments on items not on the agenda and on items on the agenda are to be limited to a total of three (3) minutes per individual.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

Disclosure – Note agenda items contractors, subcontractors and agents, which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation in the appropriate item.

N/A

E. DISCUSSION ITEMS

- | | |
|--|----|
| 1. Approve Administrative & Finance Committee Minutes – February 11, 2016 | 2 |
| 2. Recommend the Board of Directors Receive and File Construction Progress Report No. 45 through February 29, 2016 - sbX E Street Corridor BRT Project | 6 |
| 3. Receive and File Omnitrans' Director of Finance Report on Price of Compressed Natural Gas | 14 |
| 4. Recommend the Board of Directors Receive and File FTA 2015 Procurement System Review Final Report and Corrective Action Plan | 16 |
| 5. Recommend the Board of Directors Approve Fiscal Year 2016-17 Budget Assumptions | 86 |

F. ADJOURNMENT

ITEM # _____ E1 _____

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES, FEBRUARY 11, 2016**

A. CALL TO ORDER

Board Chairman Sam Spagnolo called the regular meeting of the Administrative and Finance Committee to order at 8:03 a.m., Thursday, February 11, 2016.

1. Pledge of Allegiance
2. Roll Call

Committee Members Present

Mayor Carey Davis, City of San Bernardino
Mayor Paul Eaton, City of Montclair
Council Member Pat Gilbreath, City of Redlands
Supervisor Curt Hagman, County of San Bernardino
Mayor Ray Musser, City of Upland
Council Member Dick Riddell, City of Yucaipa
Council Member John Roberts, City of Fontana
Council Member Alan Wapner, City of Ontario

Others Present

Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga
Michael Xu, Vavrinek, Trine, Day & Company
Roger Alfaro, Vavrinek, Trine, Day & Company

Committee Members Not Present

Council Member Ed Graham, City of Chino Hills
Mayor Pro Tem Sylvia Robles, City of Grand Terrace

Omnitrans Administrative Staff Present

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources/Safety & Regulatory Compliance
Samuel Gibbs, Director of Internal Audit Services
Jacob Harms, Director of Information Technology
Andres Ramirez, IPMO Manager
Don Walker, Director of Finance
Wendy Williams, Director of Marketing/Planning

Omar Bryant, East Valley Maintenance Manager
Eugenia Pinheiro, Contracts Manager
Maurice Mansion, Treasury Manager
Mark Crosby, Security & Emergency Preparedness Coordinator
Vicki Dennett, Executive Assistant to CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

The next Committee Meeting is scheduled Thursday, March 10, 2016, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflict of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Administrative & Finance Committee Minutes – January 14, 2016

M/S (Eaton/Musser) that approved the Committee Minutes of January 14, 2016. Motion was unanimous by Members present.

2. Recommend to Board of Directors, Receive and File Construction Progress Report No. 44 through January 31, 2016 – sbX E Street Corridor BRT Project

IPMO Manager Andres Ramirez presented this item. The San Bernardino City final acceptance work is complete, and contract closure is scheduled to go before the full Board in March.

This item was received and filed, and will be forwarded to the Board of Directors for receipt and file.

3. Receive and File Omnitrans' Director of Finance Report on Price of Compressed Natural Gas

Finance Director Don Walker presented this item, summarizing the downward trend from January 2015 to the present, twenty-one cents below budget, equating to an estimated monthly saving of \$83,098.

This item was received and filed.

4. Recommend the Board of Directors Receive and File Omnitrans' Fiscal Year Ended June 30, 2015 Audit Reports

Roger Alfaro, Partner of Vavrinek, Trine, Day & Company, presented an overview of this item, summarizing the audit reports:

- Statement of Auditing Standards Letter, and Management Letter
- Agreed-Upon Procedures Performed with Respect to the National Transit Database (NTD) Report
- Single Audit Report on Federal Awards
- Independent Auditors' Report on Proposition 1B
- Comprehensive Annual Financial Report

Member Gilbreath questioned the donation of \$72 million, stating that a disclosure footnote should have been included for clarification purposes. Member Musser asked if there's anything that wasn't disclosed in the audit that could be discussed verbally regarding succession planning. As a result of the audit process, if anything is identified as a deficiency, Vavrinek has a responsibility to bring it to the attention of the Omnitrans Board; so, the answer to Member Musser's question is no.

M/S (Gilbreath/Musser) that recommended to the Board of Directors receipt and file of Omnitrans financial audit reports for fiscal year ended June 30, 2015. This item was received and filed, and will be forwarded to the Board of Directors for receipt and file.

5. Recommend the Board of Directors Adopt Proposed Personnel Policy Changes and Approve Job Descriptions for Special Transit Services Department

Director of Human Resources/Safety & Regulatory Compliance Marjorie Ewing presented this item for discussion.

M/S (Eaton/Musser) that adopted the proposed changes to Policy 303 – New Positions and Policy 402 – Salary Ranges – Management and Confidential Employees; and that approved Job Descriptions for the new Special Transit Services Department. Motion was unanimous by Members present.

F. ADJOURNMENT

The Administrative and Finance Committee meeting adjourned at 8:36 a.m.

The next Administrative and Finance Committee Meeting is scheduled Thursday, March 10, 2016, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # E2

DATE: March 10, 2016

TO: Committee Chair Ed Graham and
Members of the Administrative & Finance Committee

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Andres Ramirez, Program Manager

**SUBJECT: CONSTRUCTION PROGRESS REPORTS NO. 45 THROUGH
FEBRUARY 29, 2016 - sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and recommend to the Board of Directors for receipt and file Construction Progress Reports No. 45 for the sbX E Street Corridor BRT Project through February 29, 2016.

BACKGROUND

This is Construction Progress Report No. 45 for the sbX E Street Corridor Project.

CONCLUSION

Receive and recommend to the Board of Directors for receipt and file Construction Progress Report No. 45 for the sbX E Street Corridor BRT Project through February 29, 2016.

PSG:AR

Attachment

**sbX E Street Corridor
Bus Rapid Transit (BRT) Project
Construction Progress Report No. 45**

February 29, 2016

Prepared By:

**Omnitrans
Integrated Project Management Office**

Contractor: SBX Corridor - Griffith/Comet Joint Venture
VMF – USS Cal Builders

Contractor Contract No.: IPMO11-5

Omnitrans Program Manager: Andres Ramirez



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- II. Project Schedule
- III. Safety
- IV. Project Budget and Cost

I. PROJECT STATUS SUMMARY

A. Project Description

The sbX E Street Corridor BRT Project is an Omnitrans transit improvement project that consists of three components.

E Street Corridor: A 15.7-mile-long Bus Rapid Transit corridor that will connect the northern portion of the City of San Bernardino with the City of Loma Linda. The sbX E Street Corridor Bus Rapid Transit (BRT) Project has evolved as the highest priority corridor identified in the System-Wide Transit Corridor Plan for the San Bernardino Valley.

Bus Purchase: In order to provide service to the E Street Corridor a total of fourteen 60' articulated buses will be purchased.

Vehicle Maintenance Facility Modifications: A 4.4-acre facility maintaining and servicing the Omnitrans' bus fleet, comprised of over 160 buses. Modifications to Omnitrans' facility include the demolition of a bus washing station, removal of abandoned underground fuel tanks and new construction of a bus washing system, a new Genset, a three-lane CNG fueling station, and re-configuring the bus parking area. Modifications to the maintenance building are made in order to accommodate Omnitrans' 60-foot articulated bus fleet.

B. Summary Status Update

E Street Corridor:

10th to Highland:

- Concrete work continues.
- Road-work to start in March.



Concrete Removals



Concrete Removals



Concrete Replacement



Concrete Replacement

PA System:

- Solicitation package has been released. Expecting Bids in March

Traffic Signal Synchronization:

- Closeout continues.

Vehicle Maintenance Facility:

Contractor Close-Out

- All contractual items turned over.
- Final Stop Notice resolved.
- Legal Counsel created letter for release of retention funds to the Contractor.

Completion of Work Removed from Contract

- Vacuum System: We will be putting together a sole source justification based on cost and time efficiency to have the subcontractor that installed the vacuum system complete the work.
- Concrete Work: We will be doing an informal mini procurement in accordance with Procurement Procedure 2030-1 to have this work completed as we are projecting it to be under \$50,000.
- Removal of the Temp Canopy and Re-Stripe the Parking: We are working with STV to put together a design packet that we can put out on the street for an IFB.

II. PROJECT SCHEDULE

The three major components of the project (E Street Corridor, 60' Articulated Buses, and the Vehicle Maintenance) are complete and have been placed into operation. Additional components to the project (i.e. 10th to Highland, City Acceptance Work, the PA System, and the VMF Completion Work) are currently being worked on and are in different stages of progress. Projected completion dates are listed below:

	Scheduled Completion	Projected Completion
E Street Corridor		
City of SB Final Work / World Oil	February 2016	Completed
10 th to Highland	June 2016	July 2016
PA System	November 2016	December 2016
Vehicle Maintenance Facility		
Completion Work	May 2016	June 2016

III. SAFETY

The project team considers safety to be the utmost priority. As such, the entire project team works towards a “no-lost time” goal on a daily basis. Below is a breakdown of the hours achieved with zero lost time due to injuries:

	Through December 2015
E Street Corridor	
Corridor Construction including final Work	425,441
10 th to Highland	4213
PA System	0
Vehicle Maintenance Facility	64,436
Total	494,090

V. PROJECT BUDGET AND COST

The project continues to be within budget. We currently have zero open claims on the project. A breakdown of the project costs and projections is detailed in the following tables:

Total Project Budget Summary Budget as of January 31, 2016

Approved Budget	\$191,706,000
Cost to Date	\$179,612,936
Estimate to Complete	
Corridor Project	\$ 4,874,823
10 th to Highland	\$ 4,209,344
Estimate at Completion	\$188,697,103

Budget By Contract Packages 30-Jan-2016								(Contract Award + Approved Changes)		(Approved Current Budget- Committed)	Forecast		
											Potential Uses of Contingency		
	PCGA Budget	Approved Current Budget	Authorized for Expenditure	Expended to Date	% of Approved Current Budget	Contracts Awarded	Approved Changes	Committed	Expenditure Authorization Remaining	Remaining Contingency	Pending Commitments/ Potential Changes	Trends/Risks	Estimate At Completion
BRT Construction													
Griffith/Comet JV	90,780,000	84,637,000	87,760,263	81,303,645	96.5%	64,937,853	16,365,792	81,303,645	6,456,618	3,333,355	-	-	81,303,645
Art			68,000	68,000		68,000	-	68,000	-	(68,000)	-	-	68,000
Other Direct Payments			48,401	199,729		143,892	-	143,892	(95,491)	(143,892)	-	-	143,892
Delineators				89,943		89,943	-	89,943	(89,943)	(89,943)	-	-	89,943
PA System				-		-	-	-	-	-	616,000	-	616,000
Miscellaneous Work				-		17,500	-	17,500	(17,500)	(17,500)	125,000	-	142,500
BRT Design													
Parsons	19,193,400	17,849,400	18,097,876	17,989,834	101.1%	14,464,092	3,725,637	18,189,729	(91,853)	(340,329)	(1,098,058)	-	17,091,671
PA System				58,500		83,000	-	83,000	(83,000)	(83,000)	8,300	-	91,300
Miscellaneous Work				-		-	-	-	-	-	-	-	-
VMF Construction - USS Cal Builders	5,370,000	8,131,000	14,498,152	14,508,233	178.4%	10,579,786	3,952,439	14,532,225	(34,073)	(6,401,225)	-	560,000	15,092,225
VMF Design													
STV	1,007,600	1,007,600	1,418,132	1,862,813	186.7%	951,029	1,048,727	1,999,756	(581,624)	(992,156)	25,000	-	2,024,756
Carlin Environmental			27,800	18,380		10,000	9,800	19,800	8,000	(19,800)	-	-	19,800
Vehicles Design & Manufacturing-N.F.	16,628,000	16,628,000	15,978,093	15,192,458	92.4%	15,483,572	325,110	15,808,682	169,411	819,318	38,000	-	15,846,682
Other Vehicle Equipment			318,853	173,484		318,853	-	318,853	-	(318,853)	75,000	-	393,853
ROW Acquisition Services-SANBAG	6,532,000	10,357,000	11,738,400	11,391,506	110.0%	10,971,135	767,265	11,738,400	-	(1,381,400)	-	100,000	11,838,400
3rd Party Utilities Design & Reloc.		1,003,000	1,157,223	1,225,401	122.2%	1,106,117	-	1,106,117	51,106	(103,117)	50,000	-	1,156,117
Project Admin. And Management													
Jacobs	6,638,000	6,632,000	11,852,647	12,969,303	195.6%	3,898,769	9,198,560	13,097,329	(1,244,682)	(6,465,329)	-	-	13,097,329
Other													
IPMO	17,624,000	15,012,450	14,722,701	13,329,162	88.8%	15,172,701	-	15,172,701	(450,000)	(160,251)	(300,000)	-	14,872,701
Insurance	1,113,000	1,112,000	500,000	-	0.0%	500,000	-	500,000	-	612,000	(500,000)	-	-
Legal-BB&K, County	2,525,450	1,000,000	1,000,000	358,600	35.9%	1,000,000	-	1,000,000	-	-	-	-	1,000,000
In Kind Contributions	8,080,550	8,080,550	8,080,550	8,401,239	104.0%	8,401,239	-	8,401,239	(320,689)	(320,689)	-	-	8,401,239
Survey	1,464,000	1,463,000	464,000	-	0.0%	25,000	-	25,000	439,000	1,438,000	-	-	25,000
Start-Up	720,000	720,000	700,000	-	0.0%	700,000	-	700,000	-	20,000	-	-	700,000
Sub-Total	177,676,000	173,633,000	188,431,091	179,140,230	103.2%	148,922,481	35,393,330	184,315,811	4,115,280	(10,682,811)	(960,758)	660,000	184,015,053
Unallocated Contingency	14,030,000	18,073,000	4,416,038					10,682,811		7,390,189			7,690,947
10th to Highland Projected Costs		4,682,050	4,682,050	472,706	10.1%	3,957,000	-	3,957,000	725,050	725,050	675,050	50,000	4,682,050
Remaining Unallocated Contingency		(4,682,050)											3,008,897
Total	191,706,000	191,706,000	188,697,103	179,612,936	93.7%								191,706,000

IPMO/sbX Project Cost Report										
Period Ended 30-Jan-2016										
Description	Current Budget	Approved Current Budget	Expenditures		Remaining Budget	Committed		Estimate to Complete	Estimate at Completion	Budget Forecast Variance
			\$	%			%			
BRT Construction	\$ 84,637,000	\$ 84,637,000	\$ 81,661,316	96.5%	2,975,684	\$ 81,622,980	96.4%	\$ 741,000	\$ 82,363,980	\$ 2,273,020
Vehicle Maintenance Facility (VMF) Construction	\$ 8,131,000	\$ 8,131,000	\$ 14,508,233	178.4%	(6,377,233)	\$ 14,532,225	178.7%	\$ 560,000	\$ 15,092,225	\$ (6,961,225)
Vehicles - Design & Manufacturing	\$ 16,628,000	\$ 16,628,000	\$ 15,365,942	92.4%	1,262,058	\$ 16,127,535	97.0%	\$ 113,000	\$ 16,240,535	\$ 387,465
ROW Acquisition Services	\$ 10,357,000	\$ 10,357,000	\$ 11,391,506	110.0%	(1,034,506)	\$ 11,738,400	113.3%	\$ 100,000	\$ 11,838,400	\$ (1,481,400)
3rd Party Utilities Design & Relocation	\$ 1,003,000	\$ 1,003,000	\$ 1,225,401	122.2%	(222,401)	\$ 1,106,117	110.3%	\$ 50,000	\$ 1,156,117	\$ (153,117)
BRT Design	\$ 17,849,400	\$ 17,849,400	\$ 18,048,334	101.1%	(198,934)	\$ 18,272,729	102.4%	\$ (1,089,758)	\$ 17,182,971	\$ 666,429
VMF Design	\$ 1,007,600	\$ 1,007,600	\$ 1,881,193	186.7%	(873,593)	\$ 2,019,556	200.4%	\$ 25,000	\$ 2,044,556	\$ (1,036,956)
Other Professional, Technical & Management Services	\$ 34,020,000	\$ 34,020,000	\$ 35,058,304	103.1%	(1,038,304)	\$ 38,896,269	114.3%	\$ (800,000)	\$ 38,096,269	\$ (4,076,269)
Allocated Contingency (Construction Contract)	\$ -	\$ -			-	\$ -	0.0%	\$ -	\$ -	\$ -
SUB-TOTAL	\$ 173,633,000	\$ 173,633,000	\$ 179,140,230	103.2%	(5,507,230)	\$ 184,315,811	106.2%	(300,758)	184,015,053	(10,382,053)
Unallocated Contingency	\$ 18,073,000	\$ 18,073,000	\$ -		18,073,000	\$ -	0.0%	\$ -	\$ -	\$ 18,073,000
TOTAL	\$ 191,706,000	\$ 191,706,000	\$ 179,140,230	93.4%	12,565,770	\$ 184,315,811	96.1%	\$ (300,758)	\$ 184,015,053	\$ 7,690,947

ITEM # _____ E3

DATE: March 10, 2016

TO: Committee Chair Ed Graham and
Members of the Administrative and Finance Committee

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Donald Walker, Director of Finance

**SUBJECT: OMNITRANS' DIRECTOR OF FINANCE REPORT ON THE PRICE
OF COMPRESSED NATURAL GAS (CNG)**

FORM MOTION

Receive and file the Director of Finance's update on the price of compressed natural gas as recommended by Committee Chair Ed Graham at the Administrative and Finance Committee meeting on August 13, 2015.

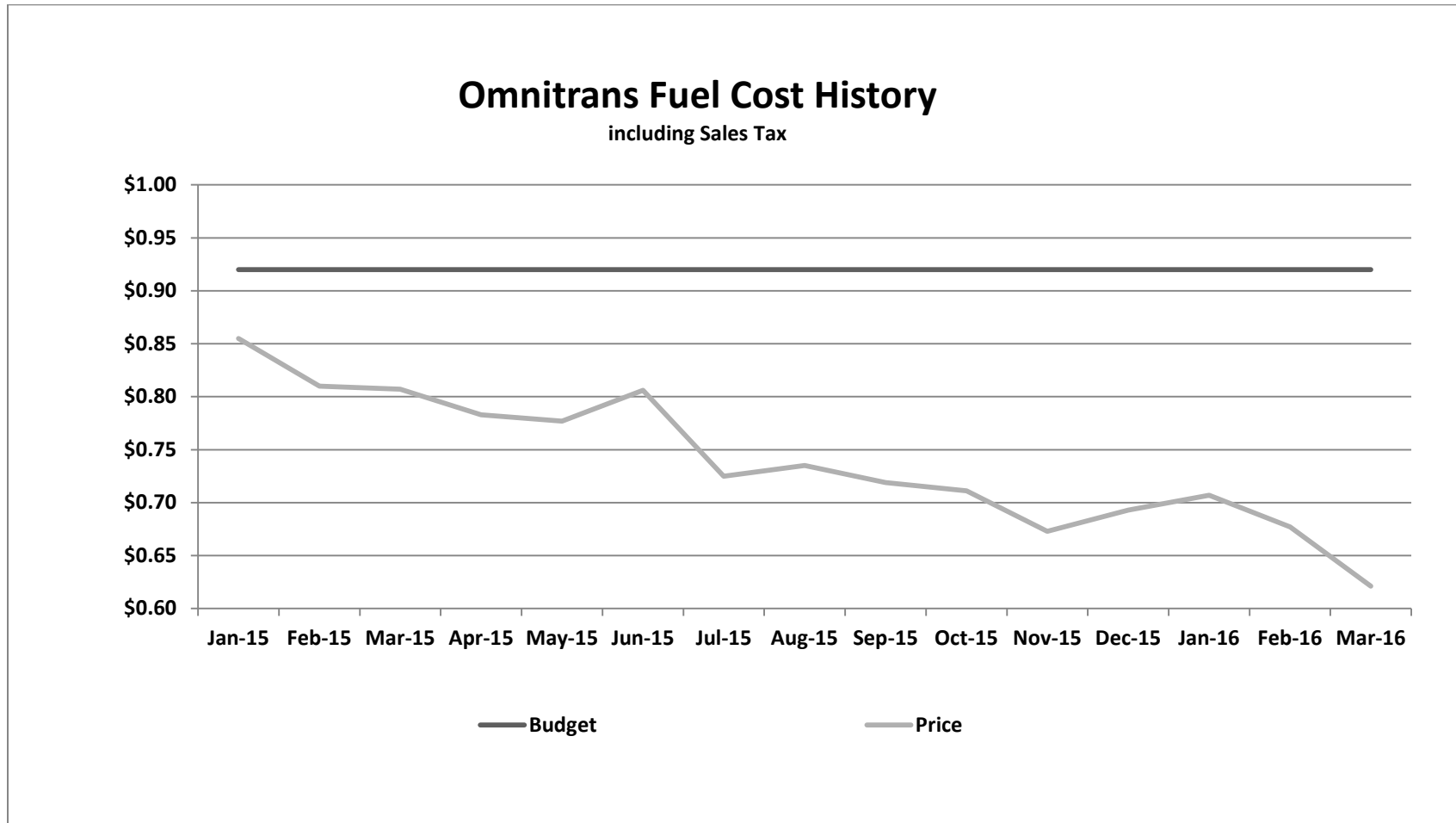
BACKGROUND

The Forward Fuel Purchase Program ended August 31, 2015, with authorization by the Board of Directors to initiate another hedging program for up to twelve (12) months should the price of natural gas increase to or exceed \$0.92 per gallon budgeted for Fiscal Year 2016.

The price of natural gas on the open market continues to be lower than anticipated. The steady downward trend started in January 2015 and continues to be below average through March 2016. The chart below gives a history of Omnitrans' price per gallon of natural gas for the past fifteen (15) months (Jan 2015 – March 2016).

The price per gallon decreased from a high of \$0.855 in January 2015 to a low of \$0.621 for March 2016. The price per gallon continues to be well below the \$0.92 budgeted for FY2016. The average price per gallon for the first eight (9) months of FY2016 (Jul 2015 – Mar 2016) is \$0.696 or \$0.224 below budget. This equates to an estimated monthly saving of \$86,576 (\$0.224 x 386,500 gals).

We will continue to monitor the price of natural gas on the open market to determine if and when it would be prudent to implement a new hedging program.



PSG:DW

ITEM # E4

DATE: March 10, 2016

TO: Committee Chair Ed Graham and
Members of the Administrative and Finance Committee

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: FTA 2015 PROCUREMENT SYSTEM REVIEW FINAL REPORT AND
CORRECTIVE ACTION PLAN**

FORM MOTION

Recommend the Board of Directors receive and file the 2015 FTA Procurement System Review Final Report and Omnitrans' Corrective Action Plan.

BACKGROUND

On June 24, 2015, Omnitrans was informed by the Federal Transit Administration (FTA) that Omnitrans was scheduled for a Procurement System Review (PSR) to examine Omnitrans' procurement policies, control procedures, and selected purchase orders and contracts involving Federal funds.

The FTA contracted with Leon Snead & Company, P.C. (Snead) of Rockville, Maryland, to conduct the review. An entrance conference was held on Monday, August 24, and concluded with an exit conference on Wednesday, August 26. Snead reviewed Omnitrans' Procurement Policies and Procedures, analyzed the contents of nineteen contract files and purchase orders valued at about \$47.1 million. The review analyzed 57 system-wide and individual elements as defined in FTA Circular 4220.1F.

The review was a follow up to Omnitrans' 2013 FTA PSR. Snead's review determined that procurement officials at Omnitrans have taken actions to correct all deficiencies noted in the prior PSR report. It further showed that the procurement system was substantially in compliance with the FTA Circular. In the current review, Omnitrans was found to be non-deficient in 41 elements, deficient relative to 9, with 7 elements not-applicable/observable. Staff provided documentation to show that the deficiency noted with its policies and procedures had been corrected prior to Snead drafting its report to the FTA. No further action was required on those elements as well as 2 additional elements that were closed based on Omnitrans' response to the draft report.

In anticipation of receiving the draft report, staff conducted training on August 31, 2015. The training focused on revised Procurement Procedure 1070-1 as it related to the FTA's Veterans' Hiring Preference. All of the contracts pulled for the review included the veterans hiring preference even though Omnitrans' procurement procedure didn't state the requirement.

A draft report was provided to Omnitrans by the FTA on October 8, 2015, listing the deficiencies and recommendations for corrective action. Omnitrans respectfully disagreed with 3 of the deficiencies and prepared a corrective action plan to address the remaining deficiencies. A training session was held on October 26 to train staff on the use of progress payments, adequate security for those payments and sufficient written documentation to substantiate the work for which payment is requested. The FY2015 PSR Final Report was received on October 29, 2015. Staff provided the final corrective action report and internal audit verified effectiveness of the training on January 11, 2016. On January 20, 2016, the FTA determined that all deficient elements had been successfully addressed and formally closed out Omnitrans' 2015 PSR.

Included with this memorandum are the following documents:

- Attachment A – FY2015 Procurement System Review Corrective Action Plan
- Attachment B – Documentation of the relative training with respective attendance sheets
- Attachment C – Internal Audit Verifying the Effectiveness of the training
- Attachment D – Fiscal Year 2015 Procurement System Review Final Report for Omnitrans

PSG:JMS

FY2015 Procurement System Review Corrective Action Report
Attachment A

Element	Reviewer's Observation	FTA Instructions/Reviewer's Comments	Management Corrective Action	Task % Complete/ Target Date
6) Policies and Procedures - Veterans Employment [FTA C4220.1F, IV, 2.c.(1)(c)].	<p>The recipient's list of clauses did include a Veterans Employment clause; however, its policies and procedures did not contain requirements for the application of that clause.</p> <p><i>On August 31, 2015, (after our site visit) the Director of Procurement provided updates to Omnitrans procurement policies and procedures that include the FTA circular requirements cited above. The policy changes are sufficient to correct both deficiencies. The Director of Procurement also provided evidence that the procurement staff has received training to ensure they are aware of the requirements. The actions taken by Omnitrans are sufficient</i></p>	Corrective action has been taken. No further corrective action is required.	N/A	N/A

FY2015 Procurement System Review Corrective Action Report
Attachment A

	<i>to resolve the findings. No further action is required for compliance with FTA Circular on these issues.</i>				
7) Independent Cost Estimate	We reviewed 14 procurement files to verify that independent cost estimates were performed and found three files lacked supporting documentation indicating an adequate independent cost estimate had been performed by the recipient before the transit authority received bids or proposals.	<i>The actions taken by Omnitrans are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA the results of its internal audit.</i>	Omnitrans will conduct an internal audit.	100% completed on January 7, 2016	
11) Organizational Conflict of Interest	We reviewed 14 procurement files for organizational conflict of interest and found in one procurement file an instance where the contractor, who was selected to provide architectural and engineering design services may have an organizational conflict of	<i>The information provided by Omnitrans is sufficient to close out the finding.</i>	N/A	N/A	

FY2015 Procurement System Review Corrective Action Report
Attachment A

	interest regarding potential follow-on contracts for work in which it has been involved.			
39) Cost Analysis Required (Sole Source) [FTA C 4220.1F, VI, 6.a	We reviewed four noncompetitive procurement files and found three procurement files that did not contain documentation to support that an adequate cost analysis had been performed. In the deficient files the recipient failed to perform an element by element analysis or discussion of the cost or profit. In addition, there was no evidence of any negotiations being conducted. No detailed independent in-house cost estimates were available to support cost comparisons in this deficiency.	Omnitrans must conduct training on developing cost and profit analysis for sole source procurements (including analysis of fixed fee) and verify compliance by conducting a self-audit of sole source procurements within 90 days from the date of the final report. <i>The actions planned by Omnitrans are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the training has been completed.</i>	Omnitrans agrees that staff would benefit from additional training on developing cost and profit analysis for sole source procurements. Omnitrans will verify compliance by conducting a self-audit of sole source procurements within 90 days from the date of the final report.	100% Complete 100% completed on January 7, 2016
40) Evaluation of Options [FTA C 4220.1F IV, 1.d;	We reviewed five procurement files that included options and	Omnitrans must conduct training on evaluation of options, implement	Omnitrans will train staff on evaluation of options, implement management	100% Complete

FY2015 Procurement System Review Corrective Action Report
Attachment A

<p>VI.7.b; V.7.a(1)(c)1</p>	<p>found one procurement file failed to adequately address this element. The procurement was a major buy for fare machines parts for buses. We found that the options or option years were not priced, or if priced no indication that they were considered or evaluated. In this particular instance unpriced options were included in the contract and the contractor was to provide the next years prices at a later date. The contractor after the first year had expired had to be contacted and requested to submit the required prices that adequately addressed the recipient's requirements. The contractor indicated the prior year's prices would be the same except that freight charges would now be on all outgoing orders. No escalation provisions were included in the contract. When there is no evaluation of</p>	<p>management controls that ensure that options are priced and evaluated as part of the contract award and verify compliance with FTA requirements within 60 days from the date of the final report.</p> <p><i>The finding should remain open until Omnitrans provides evidence to FTA that the recommended training has been completed.</i></p>	<p>controls that ensure options are priced and evaluated as part of the contract award.</p> <p>Omnitrans will verify compliance by conducting a self-audit of sole source procurements within 60 days from the date of the final report.</p>	<p>100% completed on January 7, 2016</p>
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FY2015 Procurement System Review Corrective Action Report
Attachment A

	options or option years at the time of award and no option provisions are contained in the contract, the recipient has no unilateral right to exercise the option and is now placed in either a sole source or a recompetition situation.			
41) Cost or Price Analysis [FTA C 4220.1F, VI,6.a(2); VI, 6.b; VI, 6.a(3)	We reviewed 14 procurement files for cost or price analysis and found one deficient procurement file relative to this element. Basically, the deficiency resulted from a general lack of detailed documentation to support the results of a cost or price analysis or whether a cost or price analysis had ever been performed. The only documentation to support the reasonableness of the costs were the statements "Award based on most advantageous proposal to Agency", and "Prices are reasonable based on past purchase history." There was no discussion or	Omnitrans must conduct training on cost and price analysis procedures, verify compliance by conducting a self-audit and verify compliance with updated requirements within 90 days from the date of the final report. <i>The finding should remain open until Omnitrans provides evidence to FTA that the recommended training has been completed.</i>	Omnitrans will train staff on cost and price analysis procedures. Omnitrans will verify compliance by conducting a self-audit of sole source procurements within 60 days from the date of the final report.	100% Complete To be conducted within 60 days

FY2015 Procurement System Review Corrective Action Report
Attachment A

	negotiations of the hours or other elements proposed or the profit of 20 percent. In those procurement files where adequate competition existed and award was made to the lowest offeror, the recipient was found not deficient; however, the procurement files should be documented to reflect this decision. In procurements where adequate competition exists and the selection is made, there always exists the possibility that negotiations may be warranted or desirable.			
44) Out of Scope Changes [FTA C 4220.1F, VI.3.i(1)(b)	We reviewed 14 procurement files for out of scope changes and found one deficient procurement file relative to this element. The deficiency was found in the Resource planning System Upgrade contract. The contract was modified five times; the	Omnitrans must conduct training on procedures regarding contract changes and verify compliance with FTA requirements within 90 days from the date of the final report. <i>The information provided is sufficient to resolve the finding. However, the finding should</i>	Omnitrans will provide training on contract changes. Omnitrans will verify compliance with the FTA within 90 days from the date of the final report.	100% Complete 100% completed on January 7, 2016

FY2015 Procurement System Review Corrective Action Report
Attachment A

<p>first changed firm fixed price hours to firm fixed price deliverable items; the second and third increase the contract dollars; the fourth adjusted the payment schedule; and the fifth extended the contract completion date. There was little or no documentation supporting or explaining the modifications. Any contracts amended to add requirements which are over and above the requirements outlined in the original request and the resultant contract are considered new work and as such require compliance with FTA requirements for an approved sole source justification, a cost analysis, and cost and profit negotiations and the procurement file documented.</p>	<p>remain open until Omnitrans provides to FTA evidence that the planned training has been completed.</p>		
<p>46) Progress Payments [FTA C 4220.1F,</p>	<p>We reviewed 14 procurement files</p>	<p>Omnitrans must conduct training on procedures</p>	<p>Boilerplate templates will be modified to address progress 100% Complete</p>


FY2015 Procurement System Review Corrective Action Report
Attachment A

2.B(5)(c)	<p>involving progress payments and found two of the contracts deficient when they failed to obtain title for which costs for goods/products were made. Normally, progress payments are made based on costs incurred and secured by title for that which the progress payments were made. It should be noted the Common Grant Rules allow the use of the percentage of completion method of payment in construction contracts only. Adequate security may include taking title, letter of credit, or performance bonds, or equivalent means to protect the recipient's interest.</p>	<p>regarding progress payments and verify compliance with FTA requirements within 60 days from the date of the final report.</p>	<p>payments and partial payments to be based on costs incurred and include appropriate title or other adequate security provisions as required. Omnitrans will provide training on progress payments.</p> <p>Omnitrans will verify compliance with the FTA within 60 days from the date of the final report.</p> <p>100% completed on January 7, 2016</p>	N/A
50) Piggybacking - Acquisition Through Assigned Contract Rights [FTA C 4220.IF, V, 7.a.(2)(a)].	<p>We reviewed one procurement file involving a piggybacking award under a contract awarded by the Morongo Basin Transit Authority (MBTA) for Allstar buses</p>	<p><i>The actions taken are sufficient to close out the finding. The procurement in question preceded the training that has been provided and there were no noted deficient procurement files after this date.</i></p>	N/A	N/A

FY2015 Procurement System Review Corrective Action Report
Attachment A


	which was deficient. The recipients' deficient procurement file lacked documentation to show before exercising the requirements that the contract prices remained fair and reasonable and the terms and conditions were in compliance with the Federal requirements.			
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FY2015 PSR Training

JENNIFER M. SIMS
DIRECTOR OF PROCUREMENT
OCTOBER 26, 2015




Element 46 Progress Payments

[FTA C 4220.1F, IV, 2 b. (5) (c)] "Progress Payments are payments made for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested."




Element 46 Progress Payments

- Common Grant Rules allow the use of percentage of completion method of payment in construction contracts only.



Element 46 Progress Payments

- Adequate security may include taking title, letter of credit, or performance bonds, or equivalent means to protect the recipient's interest.



Element 46 Progress Payments

Effective immediately:

- Open agreements are to be amended to include the revised progress payment language (see handout).
- Open Solicitations: Attached "Sample Agreements" are to be updated via addenda

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. AUDIT AND INSPECTION OF RECORDS

CONTRACTOR agrees that OMNITRANS or any duly authorized representative shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards, employment records or other records relating to this Agreement. Such material, including all pertinent cost, accounting, financial records, and proprietary data must be kept and maintained by CONTRACTOR for a period of three (3) years after completion of this Agreement unless OMNITRANS' written permission is given to CONTRACTOR to dispose of material prior to this time.

7. NOTIFICATION

All notices hereunder concerning this Agreement and the Work to be performed shall be physically transmitted by courier, overnight, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

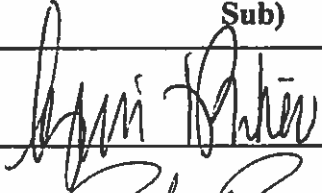
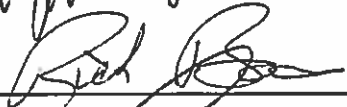
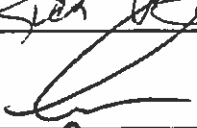
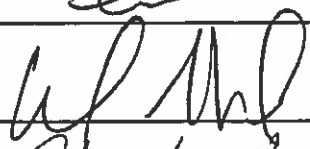
OMNITRANS
1700 WEST FIFTH STREET
SAN BERNARDINO, CALIFORNIA 92411

PROGRESS PAYMENTS

OCTOBER 26, 2015

FUELING FACILITIES

ATTENDANCE LOG

PRINT NAME & COMPANY (Indicate if Prime or Sub)	TELEPHONE NUMBER/E-MAIL
	x7124
	x7204
	7187
	x7246
Christine VanMatre	x7122
Kathy McClure	x7186
Crystal Turner	x7202

Procurement Training

FTA C 4220.1F

December 02, 2015



Presented by:
Jennifer M. Sims, C.P.M., Director of Procurement

Agenda

- › Element 39 - Cost Analysis Required [Sole Source]
- › Element 40 - Evaluation of Options
- › Element 41 - Cost or Price Analysis;
- › Element 44 - Out of Scope Changes
- › Element 46 - Progress Payments



11/6/2012

2

Element 39 - Cost Analysis Required [Sole Source]

When less than full and open competition is available to the recipient, the Common Grant Rule for governmental recipients directs the recipient to:

"Prepare or obtain a cost analysis verifying the proposed cost data, the projections of data, and the evaluation of the costs and profits."



11/6/2012

3

Element 39 - Cost Analysis Required [Sole Source]

The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.



11/6/2012

4

Element 39 - Cost Analysis Required [Sole Source]

The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order.



11/6/2012

5

Element 39 - Cost Analysis Required [Sole Source]

Profit. FTA expects the recipient to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the recipient performs or acquires a cost analysis.



11/6/2012

6

Element 39 - Cost Analysis Required [Sole Source]

To establish a fair and reasonable profit, the recipient needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.



11/8/2012

7

Element 39 - Cost Analysis Required [Sole Source]

What is a cost analysis?

- An element by element analysis of the costs which make up the total price of the product.
- A break down of the total price broken down into components, into the degree of looking at the suppliers costs to determine the profit and margin contained in the price.



11/8/2012

8

Element 39 - Cost Analysis Required [Sole Source]

When to use a Cost Analysis?

- When the price analysis does not provide sufficient information.
- adequate price competition is lacking.
- the offerer is required to submit costs such as labor hours, overhead, material and equipment costs.



11/8/2012

9

Element 39 - Cost Analysis Required [Sole Source]

When to use a Cost Analysis?

- When the price analysis does not provide sufficient information.
- adequate price competition is lacking.
- the offerer is required to submit costs such as labor hours, overhead, material and equipment costs.



11/8/2012

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Element 39 - Cost Analysis Required [Sole Source]

Analyzing Cost and Using Pricing Data

Submitted by Contractor "A" proposal for Curb/Gutter and Landscaping Services.

Item	Cost
Direct Labor	\$1,203.50
Equipment	\$300.00
Overhead	\$241.31
Total Costs	\$1,744.80
Profit	\$127.69
Price	\$1,872.50



11/8/2012

11

Element 39 - Cost Analysis Required [Sole Source]

Description	Type	Quantity	Type	Rate	Overhead	Mark-Up	Total
Labor	Operator	10	Hour	\$48.55	20%	7.8	\$628.70
Labor	Landscaper	10	Hour	\$6.25	20%	7.8	\$68.93
Labor	Labor	10	Hour	\$5.55	20%	7.8	\$59.87
Equipment	Skid Steer	10	Hour	\$30.00	5%		\$315.00
Total							\$1,872.50



11/8/2012

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Element 39 – Cost Analysis Required [Sole Source]

- Analysis: explanation of the costs submitted vs. the cost that were estimated based on the Independent Cost Estimate.
- What is the reasoning for the variance.
- A breakdown of the cost will allow for detailed analysis.
- Establish that costs fair and reasonable.



11/8/2012

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Element 39 – Cost Analysis Required [Sole Source]

Description	Type	Quantity	Unit	Rate	Overhead	Mark Up	Total
Labor	Operator	10	Hour	\$48.55	20%	7.8	\$628.70
Labor	Landscaper	10	Hour	\$6.25	20%	7.8	\$68.93
Labor	Labor	10	Hour	\$5.55	20%	7.8	\$79.87
Total							\$1,557.50

Description	Type	Quantity	Unit	Rate	Overhead	Mark Up	Total
Labor	Operator	5	Hour	\$48.55	20%	8.0	\$314.60
Labor	Landscaper	10	Hour	\$6.25	20%	8.0	\$68.80
Labor	Labor	10	Hour	\$5.55	20%	8.0	\$68.72
Total							\$1,245.12



11/8/2012

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Element 39 – Cost Analysis Required [Sole Source]

Cost Analysis:

Work was required for curb, gutter and landscaping services. A proposal was submitted by Contractor "A" in the amount of \$1,872.50.

On date "X" the contract was advised to submit a breakdown of their cost. Contractor "A" submitted his cost. In review of the contractors cost, and the cost submitted through the ICE in the amount of \$1,545.12, a breakdown and comparison was completed of the cost proposal and ICE.



11/8/2012

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Element 39 – Cost Analysis Required [Sole Source]

- The proposal cost is 17% higher than the cost of the ICE.
- The contractor shows a total of 5 more hours for operator services.
- Enter into a discussion with the contractor and the project manager:
 - Discuss hours.
 - Negotiate Mark-up



11/8/2012

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Element 40 – Evaluation of Options

The option quantities or periods contained in the contractor's bid or offer were evaluated in order to determine contract award. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards.)

Review Examples:

- Not Deficient: RFQu-MNT15-04
- Deficient: RFQu-OPS14-13 TR Design



11/8/2012

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Element 41 – Cost or Price Analysis

Either a cost analysis, with associated profit negotiation, or a price analysis is to be performed and documented in the procurement file with respect to the initial contract award. Also, cost analysis was performed when negotiating contract modifications unless price reasonableness was established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.



11/8/2012

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Element 41 - Cost or Price Analysis

What is the difference? When to use each one?

Price Analysis	Cost Analysis
Analyzes suppliers' price	Compares costs to other market prices
Direct comparison of a supplier's price with benchmark prices for the same goods or service	Reviews profits and mark-ups
	Analyze hourly rates, equipment rates, and material costs



11/6/2012

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Element 44 - Out of Scope Changes

Contracts cannot be amended outside the scope of the original contract. Out of scope amendments are treated as sole source procurements (complying with FTA requirements for a justification, cost analysis and profit negotiation).

[FTA C 4220.1F VI, 3.1.1(b)] When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.

Review Deficient Procurement: ITS15-50 TMR Management



11/6/2012

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Element 46 - Progress Payments

Progress Payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

- Adequate Security for Progress Payments
- Adequate Documentation
- Percentage of Completion Method



11/6/2012

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Element 46 - Progress Payments

Adequate Security for Progress Payments - Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances.

- Consider the costs (bonds or letters of) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.



11/6/2012

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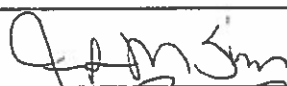


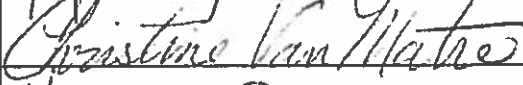



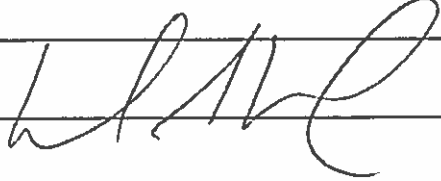
Element 46 - Progress Payments

- **Adequate Documentation** - Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
- **Updated Boilerplate language** - Omnitrans' standard agreement, Section 5 - Invoicing and Payment has been updated to include subsection C. Title (see handout).
- **Percentage of Completion Method** - The Common Grant Rules requires that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.



11/6/2012

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Name	Signature
Jennifer M. Sims, Director of Procurement	
Rick Barone, Material Manager	
Kathy McClure, Sr. Contract Administrator	
Christine Van Matre, Contract Administrator	
Krystal Turner, Contract Administrator	
Megann Martinez, Procurement Admin. Clerk	
Frank Flores, Warranty Coordinator	
Sam Gibbs, Internal Auditor	
WILLIAM A. VALLE	



Omnitrans Department of Internal Audit Services

Internal Audit Report # 15-09

Procurement System Review Follow-Up Audit

Auditor Name: Samuel Gibbs, PhD

Audit Date: December 22, 2015

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INTRODUCTION

Background

Omnitrans is the transit provider for the San Bernardino Valley under a Joint Power Agreement (JPA) between fifteen cities and the County of San Bernardino. The Mission of Omnitrans is to provide the San Bernardino Valley with comprehensive public mass transportation services which maximize customer use, comfort, safety and satisfaction while efficiently using financial and other resources in an environmentally sensitive manner. A significant portion of Omnitrans' operations are funded by Federal Transit Administration (FTA) grants.

Under contract to the United States Department of Transportation, Federal Transit Administration (FTA), Leon Snead & Company, P.C. performed a Procurement System Review of Omnitrans in San Bernardino, California during the period from August 24 through August 26, 2015. The review was made to determine whether Omnitrans was deficient or not deficient with respect to each of the requirements of FTA Circular 4220.1F as it relates to procurements for the purpose of developing and administering transit related programs.

During the 24-month period ended July 31, 2015, covered by the review, Omnitrans awarded 79 contracts and purchases orders for approximately \$64 million that included Federal funds. The review covered 19 contracts and purchase orders valued at about \$47.1 million. The review assessed the Omnitrans' compliance with 57 "elements," or requirements, as defined in FTA Circular 4220.1F. The review assessment is divided into two categories: 1. Not Deficient (definition: in all instances the grantee complied with the requirement), and 2. Deficient (definition: in one or more of the applicable instances the grantee did not comply with the requirement).

This review was a follow up to the PSR conducted in 2013. The review determined that Procurement officials at Omnitrans have taken actions to correct all deficiencies noted in the prior PSR report. It further showed that the procurement system was substantially in compliance with the FTA Circular requirements. Omnitrans had no deficiencies with respect to 41 of the Procurement requirements of the FTA Circular 4220.1F and it had deficiencies relative to nine of the requirements. Compliance with seven elements in the FTA Circular did not apply to the contract files reviewed.

The deficiencies noted were not widespread. Eleven of the 19 contracts files reviewed had no deficiencies. Two contract files had two or more deficiencies and another six files had only one. We also noted that the agency needed to update its procurement procedures to add two requirements of the circular and to ensure that pre-award and post-delivery certifications are executed properly. The deficiencies shown below reflect the areas where more attention was needed to ensure compliance with the Circular requirements.

Element 6 - Policies and Procedures	Element 41 - Cost or Price Analysis
Element 7 - Independent Cost Estimate	Element 44 - Out of Scope Changes
Element 11 - Organizational Conflict of Interest	Element 46 - Progress Payments
Element 39 - Cost Analysis Required (Sole Source)	Element 50 - Piggybacking

Element 40 - Evaluation of Options

After the onsite visit, Omnitrans provided documentation to show that the deficiency noted with its policies and procedures has been corrected. No further action is required for compliance on Element 6. Also, it was recommended closing Elements 11 and 50 based on Omnitrans response to the draft report.

There are six elements that required additional action by Omnitrans' staff. Training must be conducted for Elements 46-Progress Payment, 44-Out of Scope Changes, 41-Cost or Price Analysis, 40-Evaluation of Options, and 39-Cost Analysis Required (Sole Source). For Element 7-Independent Cost Estimate, training is required, and an internal audit conducted on the updated requirements.

Audit Perspective

Present audit status

This audit was conducted to provide assurances that the corrective actions recommended were completed. This audit is a validation of corrective actions to the PSR review; therefore an audit opinion is not required.

Recent past audits

The last Procurement reviews were conducted by FTA contractors in April 2013.

External audit coverage

N/A

Scope & Objectives

The scope of this audit is to verify compliance for corrective actions recommended for Elements 46-Progress Payment, 44-Out of Scope Changes, 41-Cost or Price Analysis, 40-Evaluation of Options, 39-Cost Analysis Required (Sole Source), and Element 7-Independent Cost Estimate, which were identified in the final report of the PSR.

EXECUTIVE SUMMARY

Purpose

Under contract to the United States Department of Transportation, Federal Transit Administration (FTA), Leon Snead & Company, P.C. performed a Procurement System Review of Omnitrans in San Bernardino, California during the period from August 24 through August 26, 2015. The review was made to determine whether Omnitrans was deficient or not deficient with respect to each of the requirements of FTA Circular 4220.1F as it relates to procurements for the purpose of developing and administering transit related programs.

During the 24-month period ended July 31, 2015, covered by the review, Omnitrans awarded 79 contracts and purchases orders for approximately \$64 million that included Federal funds. The review covered 19 contracts and purchase orders valued at about \$47.1 million. The review assessed the Omnitrans's compliance with 57 "elements," or requirements, as defined in FTA Circular 4220.1F. The review assessment is divided into two categories: 1. Not Deficient (definition: in all instances the grantee complied with the requirement), and 2. Deficient (definition: in one or more of the applicable instances the grantee did not comply with the requirement). This report validates that the recommended training were conducted, and serves as the required internal audit.

Limitations

This audit is limited to the specific recommendations taken from the final report of the PSR for site visit dated August 24-26, 2015. More specifically the audit is further limited to the 6 elements identified for corrective action in the context of the PSR. In the cases where there were no contracts done within the 30 days of the final report, validation will be conducted by other means. This review will need to validate compliance through observations and interviews, in addition to the review of contracts.

Audit Opinion

A normal audit opinion is not required in this instance since the scope of this audit is to validate already identified deficiencies, not fact find.

Method(s)

Random Procurement employees were interviewed to validate understanding of the Procurement process for the elements specified above. Contracts were reviewed randomly to validate application of corrective measures.

INTERNAL AUDIT OPINION

As a result of observations, interviews, and audits I validate, the Omnitrans' Procurement staff is compliance with the corrective action requirements of the PSR review.

I would further recommend that the training provided continues on an ongoing base.



AUDITOR-IN-CHARGE

December 31, 2015
DATE



DIRECTOR, INTERNAL AUDIT

December 31, 2015
DATE

DETAIL REPORT

Overview

Under contract to the United States Department of Transportation, Federal Transit Administration (FTA), Leon Snead & Company, P.C. performed a Procurement System Review of Omnitrans in San Bernardino, California during the period from August 24 through August 26, 2015. The review was made to determine whether Omnitrans was deficient or not deficient with respect to each of the requirements of FTA Circular 4220.1F as it relates to procurements for the purpose of developing and administering transit related programs.

During the 24-month period ended July 31, 2015, covered by the review, Omnitrans awarded 79 contracts and purchases orders for approximately \$64 million that included Federal funds. The review covered 19 contracts and purchase orders valued at about \$47.1 million. The review assessed the Omnitrans's compliance with 57 "elements," or requirements, as defined in FTA Circular 4220.1F. The review assessment is divided into two categories: 1. Not Deficient (definition: in all instances the grantee complied with the requirement), and 2. Deficient (definition: in one or more of the applicable instances the grantee did not comply with the requirement). Listed below are the primary validation, an outline of the deficiencies, the results of the validations, and an overall evaluation.

Primary Validation

The validation process was broken into two areas. The areas are sectioned out under the header labeled "deficiencies", and are listed as: training only, and training and internal audit.

Deficiencies

Training Only

Training must be conducted for Elements 46-Progress Payment, 44-Out of Scope Changes, 41-Cost or Price Analysis, 40-Evaluation of Options, and 39-Cost Analysis Required (Sole Source.

Result of validation

All training was conducted and the required employees were present (see attachment).

Additionally, the reviewer mentioned in the final report regarding Element 46, the actions taken and planned are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the planned training has been completed. All required training have been completed (see attachment)

Training and Internal Audit

For Element 7-Independent Cost Estimate, training is required, and an internal audit conducted on the updated requirements.

Results of validation.

The reviewer indicated on the final PSR report, the actions taken by Omnitrans is sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA the results of its internal audit. The grantee should have the following supporting documentation indicating an adequate independent cost estimate had been performed by the recipient before the transit authority received bids or proposals:

- The grantee should use a formal procurement requisition form to initiate the procurement process. This form is generated by the requiring organization.
- The independent cost estimate must be received before receipt of proposals and supported with sufficient detailed information as to its development and/or source; in other words, how derived and by whom.
- The independent cost estimate becomes the first step in the cost/price reasonableness analysis.









The following contracts were reviewed for compliance with the above ICE requirements: PRC15-140 Office Supplies, RFP-HRS16-28 Temporary Employment Services, and RFPMNT15-133 Design-Build-Maintain Compressed Natural Gas Infrastructure at East and West Valley Vehicle Fueling Facilities. All contracts reviewed were within compliance and had all required documentation.

Overall Evaluation

It is my determination based on the interviews conducted, observations, and audits of contracts, purchase orders, and change orders; Omnitrans has complied with all corrected actions recommended by FTA through their reviewing contractor.

Attachments:

Procurement Training
 Elements: 39, 40, 41, 44
 December 2, 2015

Name	Signature
Jennifer M. Sims, Director of Procurement	
Rick Barone, Material Manager	
Kathy McClure, Sr. Contract Administrator	
Christine Van Matre, Contract Administrator	
Krystal Turner, Contract Administrator	
Megann Martinez, Procurement Admin. Clerk	
Frank Flores, Warranty Coordinator	
Sam Gibbs, Internal Auditor	
WILLIAM A. VALLE	

FINAL REPORT

Procurement System Review of Omnitrans

San Bernardino, California

Dates of Site Visit: August 24-26, 2015

**Prepared by:
Leon Snead & Company, P. C.
416 Hungerford Drive, Suite 400
Rockville, MD 20850**

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EXECUTIVE SUMMARY

Under contract to the United States Department of Transportation, Federal Transit Administration (FTA), Leon Snead & Company, P.C. performed a Procurement System Review of Omnitrans in San Bernardino, California during the period from August 24 through August 26, 2015. The review was made to determine whether Omnitrans was deficient or not deficient with respect to each of the requirements of FTA Circular 4220.1F as it relates to procurements for the purpose of developing and administering transit related programs.

During the 24-month period ended July 31, 2015, covered by the review, Omnitrans awarded 79 contracts and purchases orders for approximately \$64 million that included Federal funds. The review covered 19 contracts and purchase orders valued at about \$47.1 million. The review assessed the recipient's compliance with 57 “elements,” or requirements, as defined in FTA Circular 4220.1F. The review assessment is divided into two categories: 1. Not Deficient (definition: in all instances the grantee complied with the requirement), and 2. Deficient (definition: in one or more of the applicable instances the grantee did not comply with the requirement).

This review was a follow up to the PSR conducted in 2013. Our review determined that procurement officials at Omnitrans have taken actions to correct all deficiencies noted in the prior PSR report. It further showed that the procurement system was substantially in compliance with the FTA Circular requirements. The recipient had no deficiencies with respect to 41 of the procurement requirements of the FTA Circular 4220.1F and it had deficiencies relative to nine of the requirements. Compliance with seven elements in the FTA Circular did not apply to the contract files reviewed (See Appendix I).

The deficiencies noted were not widespread. Eleven of the 19 contracts files reviewed had no deficiencies. Two contract files had two or more deficiencies and another six files had only one. We also noted that the agency needed to update its procurement procedures to add two requirements of the circular and to ensure that pre-award and post-delivery certifications are executed properly. The deficiencies shown below reflect the areas where more attention was needed to ensure compliance with the Circular requirements.

Element 6 - Policies and Procedures	Element 41 - Cost or Price Analysis
Element 7 - Independent Cost Estimate	Element 44 - Out of Scope Changes
Element 11 - Organizational Conflict of Interest	Element 46 - Progress Payments
Element 39 - Cost Analysis Required (Sole Source)	Element 50 - Piggybacking
Element 40 - Evaluation of Options	

After our onsite visit, Omnitrans provided documentation to show that the deficiency noted with its policies and procedures has been corrected. No further action is required for compliance on element number six. Also, we recommend closing elements 11 and 50 based on Omnitrans response to the draft report. Corrective actions have not been completed on the remaining elements. As a result, we are requesting that Omnitrans provide to FTA information on the status of completion within the timeframes prescribed in section III, B, of the report.

I. PROCUREMENT SYSTEM REVIEW BACKGROUND

Background

This procurement system review of Omnitrans was performed in accordance with the Federal Transit Administration (FTA) procedures and included a risk assessment phase and contract review phase. During the risk assessment phase, we obtained an understanding of the recipient's procurement system and assessed its risk for noncompliance. During the contract review phase, we assessed the recipient's compliance with the FTA circular and other regulatory requirements through a review of selected procurement files.

The objectives of the Procurement System Review (PSR) are to encourage and facilitate improved procurement operations of FTA grant recipients and to assess their compliance with all applicable Federal requirements. Specifically, the PSR ensures improved and greater compliance with the requirements of FTA Circular 4220.1F and the Pre-Award and Post-Delivery Rule. The PSR is designed to be a customer-oriented review that encourages working relationships between FTA and Omnitrans.

Required Elements

The PSR looks at both systemwide elements and individual procurement elements. Systemwide procurement elements are FTA requirements that apply to the procurement system as a whole. Individual procurement elements are requirements evaluated on an individual contract-by-contract basis.

Classification of Findings

The reviewer records deficiencies for each systemwide and individual procurement element. The reviewer determines deficiencies for systemwide elements based on the results of the Systemwide Requirements Review Check List. The reviewer determines deficiencies for each individual procurement element based upon all the contract files reviewed.

Two levels of findings are used:

- Not Deficient. A finding of "not deficient" indicates that Omnitrans complied with the basic requirements of the element. This is defined as, "The review of the selected procurement files found that in all instances, the grantee complied with the requirement."
- Deficient. A finding of "deficient" indicates that Omnitrans did not always comply with the requirements of the element. This is defined as, "The review of the selected procurement files found that in one or more of the applicable instances, the grantee did not comply with the requirement."

We discussed our findings and recommendations with Omnitrans officials at an exit conference on August 26, 2015. The officials listed below were in attendance.

Name	Title	Organization	Phone/E-Mail
Scott Graham	CEO/General Manager	Omnitrans	909-379-7112 scott.graham@omnitrans.org
Jennifer Sims	Director of Procurement	Omnitrans	909-379-7203 jennfer.sims@omnitrans.org
Donald Walker	Director of Finance	Omnitrans	909-379-7131 donald.walker@omnitrans.org
Diane Cacodna	Director of Operations	Omnitrans	909-379-7211 diane.cacodna@omnitrans.org
Samuel Gibbs	Director of Internal Audit	Omnitrans	909-379-7292 samuel.gibbs@omnitrans.org
Marjorie Ewing	Director of Human Resource	Omnitrans	909-379-7261 marjorie.ewing@omnitrans.org
Christine VanMatre	Contract Administrator	Omnitrans	909-379-7122 christine.vanmatre@omnitrans.org
Krystal Turner	Contract Administrator	Omnitrans	909-379-7202 krystal.turner@omnitrans.org
Omar Bryant	Maintenance Manager	Omnitrans	909-379-7482 omar.bryant@omnitrans.org
William Valle	Contracts Review Analyst	Omnitrans	909-379-7246 william.valle@omnitrans.org
Eugenia Pinheiro	Contracts Manager	Omnitrans	909-379-7128 eugenia.pinheiro@omnitrans.org
Andres Ramirez	Program Manager	Omnitrans	909-379-7288 andres.ramirez@omnitrans.org
Megann Martinez	Procurement Admin Clerk	Omnitrans	909-379-7146 megann.martinez@omnitrans.org
Leon Snead	Program Manager	Leon Snead & Company, P.C.	301-738-8190 leonsnead.companypc@erols.com
Bud Maraist	Assistant Program Mgr.	Leon Snead & Company, P.C.	301-738-8190 leonsnead.companypc@erols.com
John Moore	Sr. Procurement Analyst	Leon Snead & Company, P.C.	301-738-8190 leonsnead.companypc@erols.com

II. DESCRIPTION OF THE GRANTEE

Omnitrans is a Joint Powers Authority (JPA) formed to provide public transportation in the San Bernardino Valley including the County of San Bernardino and 15 member cities of: Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland and Yucaipa. In addition, Omnitrans serves the unincorporated communities of Bloomington, Mentone and Muscoy. The county and all member cities are represented on the Omnitrans Board of Directors. The Board is responsible for the establishment of all policies, rules and regulations under which the agency operates.

The agency is managed by a General Manager who is appointed by the Board. The General Manager also holds the position of Chief Executive Officer. The agency management team operations through 13 departments which include the Department of Procurement. The Director of Procurement reports to the CEO/General Manager.

Omnitrans serve area is about 460 square mile with a population of 1.5 million residents. The agency offers a selection of fixed route and on demand services designed to match the service with the land use, ridership activity and needs of the community. It operates a fleet of 177 transit coaches, 100% CNG powered, and 110 vans and mini buses for demand response. Service is provided weekdays from 3:48 a.m.to 11:13 p.m. Saturday and Sunday service is operated from 5:00 to 10:50 p.m. Complementary paratransit service operates during the same days and hours of service as the fixed routes. The agency provides the following type of services.

- **Bus Rapid Transit (BRT):** BRT service (launched in April 2014) mirrors light-rail service on rubber tires with dedicated lanes, enhanced amenities, stand-alone stations, level boarding and significantly reduced travel times while utilizing dedicated branded BRT buses.
- **Local Service:** Traditional large bus service operating on set route with set schedule at defined frequencies.
- **Community Circulator (OmniGo):** Small bus service designed to offer lifeline mobility for areas with relatively low population and employment density. OmniGo provides service to key locations within Grand Terrace, Chino Hills and Yucaipa.
- **Express Service:** Freeway bus service using a traditional large bus on a set route with a set schedule and frequency that is designed to connect two or more areas of highly concentrated activity. Route(s) typically travel mostly by freeway and stops are placed several miles apart.
- **ADA Paratransit:** Origin-to-destination service provided to comply with the Americans with Disabilities Act (ADA) that is complementary to fixed-route service, and is provided within $\frac{3}{4}$ -mile of a fixed route. Beyond-the boundary Access service extends Access past the $\frac{3}{4}$ -mile fixed route boundary to the edge of each JPA member city, for a nominal fee.
- **General Public Dial-a-ride:** Origin-to-destination general public lifeline service in Chino Hills and Yucaipa for cities where traditional fixed route service have not historically been efficient due to the intensity of activity and the lack of directness of the road network.

The operating revenue for fiscal year 2014 was \$14,363,317 and operating expenses were \$86,171,845. Revenues from other sources amounted to \$111,385,424 of which \$50,785,745 were provided by federal and local operating grants.

III. RESULTS OF THE REVIEW

The results of the review are summarized for each systemwide and individual procurement element. For each procurement requirement, the report describes the required element, cites a reference to FTA Circular 4220.1F (and other applicable regulations), discusses the issues and identifies deficiencies, presents best practices/advisory comments, and incorporates the recipient's corrective actions and schedule.

A. SYSTEMWIDE PROCUREMENT ELEMENTS

Systemwide procurement elements are requirements that apply to the procurement system as a whole. The systemwide procurement elements are primarily evaluated during the Assessment Phase. During the Assessment Phase, we interviewed senior management and reviewed the policies, regulations and procedures of the grantee to assess the procurement system environment. We also interviewed procurement staff to assess the effectiveness of the procurement system. The findings in this section are a result of these interviews, review of regulations, and additional insights gained during the Contract Review Phase.

NOT DEFICIENT

The recipient's system was "not deficient" with respect to the following element:

Element 1 – *Written Standards of Conduct*

Element 2 – *Contract Administration System*

Element 3 – *Written Protest Procedures*

Element 4 – *Prequalification System*

Element 5 – *Procedures for Ensuring Most Efficient and Economic Purchase*

DEFICIENT

The grantee was "deficient" with respect to the following elements:

Element 6 – *Procurement Policies and Procedures*

Written Procurement Procedures [FTA C4220.1F, III, 3.a.] The Common Grant Rule for non-governmental recipients requires the recipient to have written procurement procedures, and by implication, the Common Grant Rule for governmental recipients requires written procurement procedures as a condition of self-certification.

Discussion

The recipient's system was "deficient" with respect to this element. The recipient's procurement policies and procedures were reviewed for the mandatory requirements of FTA C 4220.1F. The following FTA requirements, listed by the FTA Circular paragraph number were deficient as noted below:

Architectural Engineering (A&E) Services and Other Services [FTA C 4220.1F, VI, 3.f.] FTA's enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described below.

- (1) Qualifications-Based Procurement Procedures Required. The recipient must use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. (Emphasis added) For example, a contractor performing program management, project design, construction management, or engineering services in which that contractor would select the finished products to be acquired for an FTA assisted construction project must be selected through qualifications-based procurement procedures.

The recipient's policies and procedures did not contain the underlined qualifying requirements with respect to construction related services.

Veterans Employment [FTA C4220.1F, IV, 2.c.(1)(c)]. Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

The recipient's list of clauses did include a Veterans Employment clause; however, its policies and procedures did not contain requirements for the application of that clause.

Advisory Comments

On August 31, 2015, (after our site visit) the Director of Procurement provided updates to Omnitrans procurement policies and procedures that include the FTA circular requirements cited above. The policy changes are sufficient to correct both deficiencies. The Director of Procurement also provided evidence that the procurement staff has received training to ensure they are aware of the requirements. The actions taken by Omnitrans are sufficient to resolve the findings. No further action is required for compliance with FTA Circular on these issues.

Corrective Action and Schedule

Corrective action has been taken. No further corrective action is required.

B. INDIVIDUAL PROCUREMENT ELEMENTS

The individual procurement elements are applicable to the contract files reviewed. We compiled the findings from all contracts reviewed by each individual procurement element. The results of those findings and conclusions are presented below and organized by whether the element was evaluated as “not deficient” or “deficient.” Those elements for which the recipient was “not deficient” are shown first and those defined as “deficient” with respect to that element are shown second. The elements classified as “not applicable” to the sample contract files reviewed are shown in Appendix I, Report Summary Table. Within each category the numbered elements appear as they are listed in FTA’s Procurement System Review Guide. We reviewed 19 procurement files involving requests for proposals, invitations for bids, sole sources and small purchases, and eight files had at least one deficiency relative to the requirements of FTA Circular 4220.1F.

NOT DEFICIENT (A full description of the elements for which the recipient was “not deficient” is in Appendix II.)

The recipient was “not deficient” with respect to the following elements:

Element 8 – *A&E Geographic Preferences*
Element 9 – *Unreasonable Qualification Requirements*
Element 10 – *Unnecessary Experience and Excessive Bonding*
Element 12 – *Arbitrary Action*
Element 13 – *Brand Name Restrictions*
Element 14 – *Geographic Preferences*
Element 15 – *Contract Term Limitation*
Element 16 – *Written Procurement Selection Procedures*
Element 18 – *Award to Responsible Contractors*
Element 19 – *Sound and Complete Agreement*
Element 20 – *No Splitting [Micro-Purchase]*
Element 21 – *Fair and Reasonable Price Determination*
Element 24 – *Clear, Accurate, and Complete Specification*
Element 25 – *Adequate Competition*
Element 26 – *Firm Fixed Price [Sealed Bid]*
Element 27 – *Selection on Price [Sealed Bid]*
Element 28 – *Discussions Unnecessary [Sealed Bid]*
Element 29 – *Advertised/Publicized*
Element 30 – *Adequate Solicitation*
Element 31 – *Sufficient Bid Time [Sealed Bid]*
Element 32 – *Bid Opening [Sealed Bid]*
Element 33 – *Responsiveness [Sealed Bid]*
Element 35 – *Rejecting Bids [Sealed Bid]*
Element 36 – *Evaluation [RFP]*
Element 37 – *Price and Other Factors*
Element 38 – *Sole Source If Other Award is Infeasible*
Element 42 – *Written Record of Procurement History*

Element 45 – *Advance Payments*
Element 48 – *Cost Plus Percentage of Cost*
Element 49 – *Liquidated Damages Provisions*
Element 51 – *Qualifications Exclude Price [A&E]*
Element 52 – *Serial Price Negotiations [A&E and Other Services]*
Element 53 – *Bid Security [Construction Over \$100,000]*
Element 54 – *Performance Security [Construction Over \$100,000]*
Element 55 – *Payment Security [Construction Over \$100,000]*
Element 56 – *Clauses*

DEFICIENT

Element 7 - Independent Cost Estimate

COST ANALYSIS AND PRICE ANALYSIS [FTA C 4220.1F, VI, 6]. The Common Grant Rules require the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

Discussion

We reviewed 14 procurement files to verify that independent cost estimates were performed and found three files lacked supporting documentation indicating an adequate independent cost estimate had been performed by the recipient before the transit authority received bids or proposals. Our review found the recipient does use a formal procurement requisition form to initiate the procurement process. This form is generated by the requiring organization. The independent cost estimate must be received before receipt of proposals and supported with sufficient detailed information as to its development and/or source; in other words, how derived and by whom. The independent cost estimate becomes the first step in the cost/price reasonableness analysis. In the deficient procurement files the in-house estimates were either not found or were budgetary type numbers without sufficient supporting details.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures, and implement management controls to ensure that one of the first steps taken in connection with every procurement action is an independent cost or price estimate. This independent estimate should be completed before receiving bids or proposals and should be maintained in the official contract file. The final purpose of the independent cost estimate is for price analysis. Either a cost or price analysis is required for every contract and every change order so that the essential objective of a reasonable price is assured. The adequacy of the price or cost analysis is a critical responsibility of the contracting official. In many contract awards the bids alone may be adequate to assure a reasonable price. However, in all negotiated procurements, most contract changes, and sealed bids where price competition was not sufficient, further analysis is required. An independent cost estimate prepared before receipt of offers is invaluable in these

circumstances. The estimate alone may, if prepared with sufficient detail and reliability in the contracting official's judgment, be sufficient to determine whether the price is reasonable. It will at least supplement other pricing data in making the determination of reasonableness. Because cost analysis can be time consuming, expensive, and raise disputes, the availability of an independent pre-bid estimate which enables price analysis and obviates cost analysis is worth material pre-bid effort.

FTA Instructions

Omnitrans must update its manual to include detailed procedural guidance on developing independent cost estimates for each procurement method such as IFBs, RFPs, sole source, and small purchases. Training must be conducted with staff on updated procedures and compliance with these updated requirements must be verified by conducting an internal audit of procurements within 90 days from the date of the final report.

Corrective Action and Implementation Schedule

While Omnitrans recognizes the opportunity to improve how Independent Cost Estimates (ICE) are developed, Consultant states that in the "deficient procurement files the in-house estimates were either 'not found' or were budgetary type numbers without sufficient supporting details." 100% of the procurement actions during the review period of July 1, 2013 through June 30, 2015 were initiated by signed and dated ICEs based on historic usage, recent prices paid for similar goods and services, catalog or market prices, etc. as evidenced in the corresponding procurement files.

Omnitrans' Procurement Policy 4000-1 has been updated since each of the above procurements was awarded. Despite Omnitrans' disagreement with this deficiency, Omnitrans recognizes the value of continuous improvement and agrees to retrain project managers on developing ICEs with greater detail in support of FTA Circular 4220.1F and the Common Grant Rule. An internal audit will be conducted within 90 days of the date of the final report.

Reviewer's Comments

The actions taken by Omnitrans are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA the results of its internal audit.

Element 11 – Organizational Conflict of Interest

Organizational Conflicts of Interest [FTA C 4220.1F, VI, 2.a.(4)(h)]. Engaging in practices that result in organizational conflicts of interest as prohibited by the Common Grant Rules:

- 1 **Occurrence.** An organizational conflict of interest occurs when any of the following circumstances arise:
 - a **Lack of Impartiality or Impaired Objectivity.** When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.

- b Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - c Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- 2 Remedies. FTA expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

Discussion

We reviewed 14 procurement files for organizational conflict of interest and found in one procurement file an instance where the contractor, who was selected to provide architectural and engineering design services may have an organizational conflict of interest regarding potential follow-on contracts for work in which it has been involved. The procurement file is silent regarding planning to avoid a potential organizational conflict of interest. The recipient's solicitation and the contract contained a "Conflict of Interest" provision which states, "Firm agrees to avoid organizational conflict of interest. An organizational conflict of interest means that due to other activities, relationships, or contracts, the Firm is unable or potentially unable to render impartial assistance or advise Omnitrans; is or might be otherwise impaired; Firm's objectivity in performing the work identified in the solicitation is or might be otherwise impaired; or the Firm has an unfair advantage. Firm is obligated to fully disclose to Omnitrans in writing any Conflict of interest issues as soon as they are known to the Firm. All disclosures must be must be disclosed at the time of Proposal submittal." This provision requires the potential contractor to make this determination. However, the circular expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures and establish management controls to ensure that organizational conflicts of interest are eliminated or mitigated. When preparing specifications and scopes of work the recipient should identify the possibilities that a firm or subcontractors may have a corporate capability to compete for follow-on work that results from the contractual design effort and thus have a competitive advantage because of prior work done, or may have a bias performing the work because of prior work done or future interests of the firm or subcontractors. Consideration should be given to using a solicitation provision that restricts the firm's eligibility for related follow-on contracts. The procurement file documentation must reflect these deliberations.

FTA Instructions

Omnitrans must update its policies and procedures and training must be conducted with user departments and requisitioners to ensure that procedures are being followed. Compliance with procedures must be verified by conducting an internal audit of procurements within 30 days from the date of the final report.

Corrective Action and Implementation Schedule

Omnitrans disagrees with this deficiency. Consultant states that the file is silent regarding “planning to avoid a potential organizational conflict of interest” yet acknowledges that the agreement includes a provision that the “firm agrees to avoid organizational conflicts of interest.” In addition to the Conflict of Interest provision, the solicitation and resulting agreement includes a Code of Conduct provision which states that the “successful firm agrees to comply with Omnitrans’ Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. Firm agrees to include these requirements in all of its subcontracts.”

Excerpt from solicitation RFQu-MNT15-04:

R. CODE OF CONDUCT

The successful Firm agrees to comply with Omnitrans’ Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. Firm agrees to include these requirements in all of its subcontracts.

Section 4.1.1 of Omnitrans’ Code of Conduct (Procurement Policy 1050 - Attachment A) states that “no Contractor shall be eligible to bid on any solicitation, procurement or contract developed from plans, specifications or drafted specifications, design, requirements, statements of work, invitations or bids and/or requests for proposals prepared in whole or in part by that Contractor;

- 4.1.1. No Contractor shall be eligible to bid on any solicitation, procurement or contract developed from plans, specifications or drafted specifications, design, requirements, statements of work, invitations or bids and/or requests for proposals prepared in whole or in part by that Contractor:

Section 36 PRECEDENCE of the fully executed agreement incorporates the provisions of RFQu-MNT15-04.

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including its Attachments A-Scope of Work, B-Fee Schedule, C-Regulatory Requirements, and D-Special Provisions; (2) provisions of RFQu MNT15-04; and (3) CONSULTANT’s proposal dated December 22, 2014, Best and Final Offer dated February 26, 2015 and Fee Schedule dated March 6, 2015.

Staff does not rely solely on the contractor to make the determination that no conflicts or potential conflicts exist. In addition to the above provisions, staff reviews bids, proposals, and statements of qualifications to identify and evaluate potential organizational conflicts of interest before contract award and documents deliberations accordingly. Section 18 of every contract

binder includes an FTA checklist where the Contract Administrator documents that any organizational conflicts of interest has been eliminated or mitigated before contract award (Attachment B).

It is for these reasons that Omnitrans respectfully requests that the deficiency on Element 11 - Organizational Conflict of Interest be removed from the FTA's final report.

Reviewer' Comments

The information provided by Omnitrans is sufficient to close out the finding.

Element 39 - Cost Analysis Required (Sole Source)

Methods of Procurement [FTA C 4220.1F, VI, 3]. The recipient should use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with State and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of the Common Grant Rule for governmental recipients, supplemented by FTA policies that address the needs of FTA recipients.

- i. Other Than Full and Open Competition. Normally, the recipient must provide for full and open competition when soliciting bids or proposals. The Common Grant Rule for governmental recipients, however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.
- (3) Procurement Procedures. When less than full and open competition is available to the recipient, the Common Grant Rule for government recipients directs the recipient to:
 - (c) Cost Analysis. Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.

Discussion

We reviewed four noncompetitive procurement files and found three procurement files that did not contain documentation to support that an adequate cost analysis had been performed. In the deficient files the recipient failed to perform an element by element analysis or discussion of the cost or profit. In addition, there was no evidence of any negotiations being conducted. No detailed independent in-house cost estimates were available to support cost comparisons in this deficiency.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures and implement management controls to ensure that an adequate cost analysis is performed for all sole source procurements. A contract file checklist and a review by the manager or supervisor are a good way of ensuring compliance with this element. The analysis should be documented in the contract or purchase order file. The cost analysis should include an evaluation of labor,

materials, other direct costs, overhead rates, G&A rates, and a profit factor. When negotiations take place, the file should be documented to reflect the results of the negotiations and the rationale behind the agreements reached.

FTA Instructions

Omnitrans must conduct training on developing cost and profit analysis for sole source procurements (including analysis of fixed fee) and verify compliance by conducting a self-audit of sole source procurements within 90 days from the date of the final report.

Corrective Action and Implementation Schedule

Of the nine (9) sole source procurements reviewed in the 2013 PSR, eight (8) were found to be deficient for “no visible effort having been made to conduct a sole source cost analysis.” In the 2015 PSR, Consultant found that the cost analysis of three (3) of the four files reviewed were not adequate. Omnitrans’ Procurement Team has made significant advances in its endeavor to be fully compliant with the requirements of FTA Circular 4220.1F. It should be noted that the subjectivity associated with measuring adequacy reverts back to the interpretation of the method and degree of analysis required as it is dependent upon the facts and circumstances surrounding each procurement. Regardless, Omnitrans agrees that staff would benefit from additional training on developing cost and profit analysis for sole source procurements and will verify compliance by conducting a self-audit of sole source procurements within 90 days from the date of the final report.

Reviewer’s Comments

The actions planned by Omnitrans are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the training has been completed.

Element 40 - Evaluation of Options

Options [FTA C 4220.1F, IV, 1.d]. The recipient’s contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

Options [FTA C 4220.1F, VI, 7.b]. In awarding the contract that will include options, the following standards apply:

- (1) Evaluation Required. In general, FTA expects the recipient to evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.
- (2) Evaluation Not Required. The recipient need not evaluate bids or offers for any option quantities when the recipient determines that evaluation would not be in its best interests.

An example of a circumstance that may support a recipient's determination not to evaluate bids or offers for option quantities is when the recipient is reasonably certain that funds will not be available to permit it to exercise the option.

Awards Treated as Sole Source Procurements [FTA C 4220.1F, V, 7.a.(1)(c)]. The following actions constitute sole source awards:

- 1 Failure to Evaluate Options Before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
- 2 Negotiating a Lower Option Price. Exercising an option after the recipient has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example.

In the circumstances described in this paragraph, FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third party contract standards for sole source awards.

Discussion

We reviewed five procurement files that included options and found one procurement file failed to adequately address this element. The procurement was a major buy for fare machines parts for buses. We found that the options or option years were not priced, or if priced no indication that they were considered or evaluated. In this particular instance unpriced options were included in the contract and the contractor was to provide the next years prices at a later date. The contractor after the first year had expired had to be contacted and requested to submit the required prices that adequately addressed the recipient's requirements. The contractor indicated the prior year's prices would be the same except that freight charges would now be on all outgoing orders. No escalation provisions were included in the contract. When there is no evaluation of options or option years at the time of award and no option provisions are contained in the contract, the recipient has no unilateral right to exercise the option and is now placed in either a sole source or a recompetition situation.

Advisory Comments

Within 30 days after receipt of this report the recipient should develop procedures and implement management controls that ensure that options are priced and evaluated as part of the contract award. The recipient should further ensure, when using options, that they have the unilateral right to exercise the options. Often the prices of the option years determine which contractor has the most advantageous bid for the recipient. On the other hand, an apparent low bidder may in fact be the high bidder after the prices of the option years are considered. If a market is such that offerors are unable to propose prices for the option years, the solicitation may identify an applicable index to be used as an escalator and the mechanics for its use. These escalation provisions must be firmly established in the solicitation and the contract. The offeror should be

advised in the solicitation how the option year price will be calculated, evaluated and the selection made.

FTA Instructions

Omnitrans must conduct training on evaluation of options, implement management controls that ensure that options are priced and evaluated as part of the contract award and verify compliance with FTA requirements within 60 days from the date of the final report.

Corrective Action and Implementation Schedule

Consultant concluded in its discussion above that “when there is no evaluation of options or option years at the time of award and no option provisions are contained in the contract, the recipient has no unilateral right to exercise the option and is now placed in either a sole source or a recompetition situation.” The deficient procurement file is a sole source contract for proprietary parts only available from Genfare. This contract was generated for the purpose of obtaining more favorable pricing. Omnitrans respectfully requests that this deficiency be removed from the final report.

Reviewer’s Comments

The reply to the finding was not responsive to the recommendation for corrective action. The finding should remain open until Omnitrans provides evidence to FTA that the recommended training has been completed.

Element 41 - Cost or Price Analysis

COST ANALYSIS AND PRICE ANALYSIS [FTA C 4220.1F, VI, 6.] The Common Grant Rules require the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

- a. **Cost Analysis.** The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
- (1) **Federal Cost Principles.** Federal cost principles contain many requirements about the allowability and allocability of costs.

- (2) Profit. FTA expects the recipient to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the recipient performs or acquires a cost analysis. To establish a fair and reasonable profit, the recipient needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- b. Price Analysis. If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. As discussed previously in subsection 3.a of this Chapter, the price analysis for micro-purchases may be limited. Similarly, the recipient may use an abbreviated price analysis for small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

Discussion

We reviewed 14 procurement files for cost or price analysis and found one deficient procurement file relative to this element. Basically, the deficiency resulted from a general lack of detailed documentation to support the results of a cost or price analysis or whether a cost or price analysis had ever been performed. The only documentation to support the reasonableness of the costs were the statements "Award based on most advantageous proposal to Agency", and "Prices are reasonable based on past purchase history." There was no discussion or negotiations of the hours or other elements proposed or the profit of 20 percent. In those procurement files where adequate competition existed and award was made to the lowest offeror, the recipient was found not deficient; however, the procurement files should be documented to reflect this decision. In procurements where adequate competition exists and the selection is made, there always exists the possibility that negotiations may be warranted or desirable.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures and implement management controls to ensure that cost or price analysis is conducted for all applicable procurement actions, consistent with FAR Part 31 cost principles, and that such analysis is adequately documented in the contract file.

FTA Instructions

Omnitrans must conduct training on cost and price analysis procedures, verify compliance by conducting a self-audit and verify compliance with updated requirements within 90 days from the date of the final report.

Corrective Action and Implementation Schedule

Adequate competition did in fact exist on RFP-ITS15-50. This best value solicitation was awarded based on the criteria listed in the solicitation: RFP-ITS15-50, Instructions to Proposers, Section Z - Selection Criteria:

Z. SELECTION CRITERIA

A. The following selection criteria will be used in determining the highest ranked Proposer:

- 1) 20 points for QUALIFICATIONS - Proposer's knowledge, skills, and ability. Documented functional and technical expertise.
- 2) 30 points for QUALITY OF WORK - The quality of the work plan or description of how the work will be performed by the consultant.
- 3) 30 points for EXPERIENCE - Proposer's experience in performing the work as described in the statement of work.
- 4) 20 points for COST/PRICE - Overall lowest cost to Omnitrans.

Consultant further states that "in procurements where adequate competition exists and the selection is made, there always exists the possibility that negotiations may be warranted or desirable." Negotiations are not required by the FTA when price competition exists:

As a result, Omnitrans respectfully requests that this deficiency be removed from the Final Report.

Reviewer's Comments

The reply to the finding was not responsive to the recommendation for corrective action. The finding should remain open until Omnitrans provides evidence to FTA that the recommended training has been completed.

Element 44 – Out of Scope Changes

Methods of Procurement [FTA C 4220.1F, VI, 3.]

i. Other Than Full and Open Competition.

- (1) When Appropriate. A recipient may use noncompetitive proposals only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:
 - (b) Sole Source. When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.

Discussion

We reviewed 14 procurement files for out of scope changes and found one deficient procurement file relative to this element. The deficiency was found in the Resource planning System Upgrade contract. The contract was modified five times; the first changed firm fixed price hours to firm fixed price deliverable items; the second and third increase the contract dollars; the fourth adjusted the payment schedule; and the fifth extended the contract completion date. There was little or no documentation supporting or explaining the modifications.

Any contracts amended to add requirements which are over and above the requirements outlined in the original request and the resultant contract are considered new work and as such require compliance with FTA requirements for an approved sole source justification, a cost analysis, and cost and profit negotiations and the procurement file documented.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop and implement management controls to ensure that all contract amendments and change orders are within the scope of the contract. If the change is not within the scope of the original contract, it is considered a cardinal change. Such changes are not properly processed as being within the authority of the Changes clause. Such changes are a sole source and must be processed and handled as new work and treated as sole source procurements whereby appropriate approvals are obtained and that the procurement files are adequately documented. In the event a sole source cannot be justified, a competitive procurement action must be initiated. All changes must be adequately documented in the procurement file.

FTA Instructions

Omnitrans must conduct training on procedures regarding contract changes and verify compliance with FTA requirements within 90 days from the date of the final report.

Corrective Action and Implementation Schedule

Omnitrans partially agrees. Management controls successfully prevented tasks outside of the scope of work of the original agreement and the CEO's authority from being added to Contract ITS15-50 under the change order clause. As a result, Amendment 3 was presented to the Board of Directors for approval on February 4, 2015 and was processed as a sole source. Omnitrans does, however, agree that the Procurement file did not adequately document the procurement history and as it pertained to the amendment process. Omnitrans will provide training on contract changes within the next 30 days and verify compliance with the FTA within 90 days from the date of the final report.

Reviewer's Comments

The information provided is sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the planned training has been completed.

Element 46 - Progress Payments

- (c) Progress Payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. [FTA C 4220.1F, IV, 2, b, (5) (c)]

Discussion

We reviewed 14 procurement files involving progress payments and found two of the contracts deficient when they failed to obtain title for which costs for goods/products were made. Normally, progress payments are made based on costs incurred and secured by title for that which the progress payments were made. It should be noted the Common Grant Rules allow the use of the percentage of completion method of payment in construction contracts only. Adequate security may include taking title, letter of credit, or performance bonds, or equivalent means to protect the recipient's interest.

Advisory Comments

Within 30 days after the date of the report, the recipient should develop procedures and implement management controls for ensuring that contracts containing progress payments are based on costs incurred and include provisions giving the recipient title to property for which progress payments are made or to insure the contracts contain other adequate security provisions.

FTA Instructions

Omnitrans must conduct training on procedures regarding progress payments and verify compliance with FTA requirements within 60 days from the date of the final report.

Corrective Action and Implementation Schedule

Omnitrans agrees with this assessment. Boilerplate templates are being modified to address progress payments and partial payments to be based on costs incurred and include appropriate title or other adequate security provisions as required. Training will be provided prior to October 31, 2015.

Reviewer's Comments

The actions taken and planned are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the planned training has been completed.

Element 50 – Piggybacking

Acquisition Through Assigned Contract Rights [FTA C 4220.1F, V, 7.a.(2)(a)]. Although FTA does not encourage the practice, a recipient may find it useful to acquire contract rights through assignment by another recipient. A recipient that obtains contractual rights through assignment may use them after first determining the contract price remains fair and reasonable, and that the

contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. The recipient using assigned contract rights is responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, FTA does expect the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient's contract.

Discussion

We reviewed one procurement file involving a piggybacking award under a contract awarded by the Morongo Basin Transit Authority (MBTA) for Allstar buses which was deficient. The recipients' deficient procurement file lacked documentation to show before exercising the requirements that the contract prices remained fair and reasonable and the terms and conditions were in compliance with the Federal requirements.

Advisory Comments

Within 30 days of the date of this report, the recipients should develop procedures and implement management controls to ensure that a determination is made that contract prices remain fair and reasonable at the time the requirement is acquired. FTA has historically encouraged recipients to consider combining efforts in their procurements to obtain better pricing through larger purchases. Recipients must ensure all Federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

FTA Instructions

Omnitrans must revise its policies and procedures with regards to piggybacking to include FTA requirements. Training must be conducted on revised procedures and compliance must be verified within 30 days from the date of the final report.

Corrective Action and Implementation Schedule

Procurement Procedure 4000-1 was revised on October 2, 2013 as the result of the 2013 PSR and training was conducted on June 13, 2013. The deficient file noted in the 2015 PSR was awarded by the Omnitrans Board of Directors on October 1, 2014. Per the FTA's request, Procurement Procedure 4000-1 was further revised on November 5, 2014 to provide additional guidance with regard to the use of intergovernmental agreements and piggybacking. Procurement staff was re-trained on November 12, 2014 (Attachment C). The FTA closed out the 2013 PSR the following day.

The actions taken by Omnitrans in November 2014 should be sufficient to resolve the finding requiring no further action for compliance with FTA Circular on these issues.

Reviewer's Comments

The actions taken are sufficient to close out the finding. The procurement in question preceded the training that has been provided and there were no noted deficient procurement files after this date.

C. PRE-AWARD AND POST-DELIVERY REVIEW REQUIREMENTS

A recipient purchasing revenue service rolling stock with funds obligated by FTA on or after October 24, 1991, must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits as prescribed in this part. In addition, such a recipient must maintain on file the certifications required under subparts B, C, and D of this part. [49 CFR § 663.7]

Pre-Award

Pre-award audit requirements [49 CFR § 663.21]. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is completed before the recipient enters into a formal contract for the purchase of such rolling stock.

Description of pre-award audit [49 CFR § 663.23]. A pre-award audit under this part includes - (a) A Buy America certification as described in § 663.25 of this part; (b) A purchaser's requirements certification as described in § 663.27 of this part; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in § 663.41 or § 663.43 of this part.

The recipient shall ensure before signing a contract with a supplier that the Buy American Certification has been reviewed and verified for both the 60% domestic content; and the proposed U.S. final assembly location, operations, and total costs. The recipient before signing a contract with a supplier, shall have performed the "Purchaser's Requirements Certification" and checked bid specification compliance with the solicitation specifications and completed the manufacturer capability study. The recipient before signing a contract with a supplier for buses shall have requested and received the manufacturer's letter satisfying the "Federal Motor Vehicle Safety Standards (FMVSS) Certification". In the event any of the foregoing has not been accomplished, the recipient has requested and received a waiver from FTA.

Discussion

The recipient was deficient with respect to this requirement. We reviewed six procurement files covering various sizes and types of buses subject to the required reviews and certifications. The review covered four contracts and two modifications exercising option quantities. In three of the procurement files all of the required pre-award certifications were found. The other three were deficient in that two were signed by the contractor and not by the recipient and the third was accomplished after the award of the contract. Pre-award documentation must be completed prior to the award of the contract.

Advisory Comments

Refer to the Advisory Comments following the Post-Delivery Review Element.

Post-Delivery

Post-delivery audit requirements [49 CFR § 663.31]. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit under this part is completed before title to the rolling stock is transferred to the recipient.

Description of post-delivery audit [49 CFR § 663.33]. A post-delivery audit under this part includes - (a) A post-delivery Buy America certification as described in § 663.35 of this part; (b) A post-delivery purchasers certification as described in § 663.37 of this part; and (c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in § 663.41 and § 663.43 of this part.

The recipient shall insure before using the vehicles in transit service that the "Buy American Certification" has been reviewed and verified for both the 60% domestic content; and the actual U.S. final assembly location, operations, and total costs. In addition, the Purchaser's Requirements Certification for procurements of rail vehicles or more than ten buses or modified vans is completed for the Resident Inspector's report and the Visual Inspections and Road Tests or Performance Tests in the case of rail vehicles. Finally, the recipient has verified that the Federal Motor Vehicle Safety Standards (FMVSS) sticker is affixed to each bus. In the event that any of the foregoing this has not been accomplished the recipient has requested and received a waiver from the FTA.

Discussion

The recipient was "deficient" with respect to this requirement. We reviewed six procurement files covering various sizes and types of buses subject to the required reviews and certifications. The review covered four contracts and two modifications exercising option quantities. In three of the procurement files, all of the required post-award certifications were found. Two of the other three were deficient in that one was signed by the contractor and not by the recipient, and the second was accomplished before the award of the contract. It should be noted the required FMVSS Certifications are to certify that the FMVSS Stickers have been affixed to the buses in addition to compliance to the FMVSS Standard. Finally, there were no deliveries yet for the third bus procurement.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures and implement management controls to insure compliance with the Pre-Award and Post-Delivery requirements. The FTA Administrator's Dear Colleague Letter C-97-03, dated March 18, 1997, and outlines the steps that a Recipient must take in performing pre-award and post-delivery reviews of rolling stock procurements to ensure their compliance with Buy America Act requirements. This Dear Colleague Letter may be found in Appendix A.2 of the Best Practices Procurement Manual. It must be stressed that Recipients are to document their reviews and include this documentation in their contract files as evidence that they have performed the required reviews. FTA has published manuals that provide detailed guidance to Recipients concerning which Buy America certifications and documents are needed to support the procurement process from issuance of the solicitation to title transfer, as well as the procedures that the Recipient may follow when conducting the pre-award and post-delivery reviews. There are also examples of Buy America calculations and responses to frequently asked questions.

The manuals are: Conducting Pre-Award and Post-Delivery Reviews for Bus Procurements; Document No: FTA DC-90-7713-93-1, Rev. B, dated May 1, 1995 and Conducting Pre-Award

and Post-Delivery Reviews for Rail Vehicle Procurements; Document No: FTA DC-90-7713-94-1, Rev. B, dated May 1, 1995.

Corrective Actions and Implementation Schedule

Omnitrans agrees with this assessment and will update its procedures accordingly and provide training within 30 days.

Reviewer's Comments

The actions planned are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the procedures have been updated and the training has been completed.

REPORT SUMMARY TABLE

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
1	Written Standards of Conduct	FTA C 4220.1F, III, 1.a.b.c.	1			1	
2	Contract Administration System	FTA C 4220.1F, III, 3.	1			1	
3	Written Protest Procedures	FTA C 4220.1F, VII, 1.a.b.	1			1	
4	Prequalification System	FTA C 4220.1F, VI, 1.c.	1			1	
5	Procedures for Ensuring Most Efficient and Economic Purchase	FTA C 4220.1F, IV, 1.b.c.e.	1			1	
6	Procurement Policies & Procedures	FTA C 4220.1F, III, 3.a.		1		1	Corrective Action Taken
7	Independent Cost Estimate	FTA C 4220.1F, VI, 6.	16	3		19	Establish Mgt Controls
8	A&E Geographic Preference	FTA C 4220.1F, VI, 2.a.(4)(g)	19			19	
9	Unreasonable Qualification Requirements	FTA C 4220.1F, VI, 2.a.(4)(a)	19			19	
10	Unnecessary Experience and Bonding	FTA C 4220.1F, VI, 2.a.(4)(e);	19			19	
11	Organizational Conflict of Interest	FTA C 4220.1F, VI, 2.a.(4)(h)	18	1		19	Establish Mgt Controls
12	Arbitrary Action	FTA C 4220.1F, VI, 2.a (4)(j)	19			19	
13	Brand Name Restrictions	FTA C 4220.1F, VI, 2.a (3)(4)(f)	19			19	
14	Geographic Preferences	FTA C 4220.1F, VI, 2.a.(4)(g)	19			19	
15	Contract Term Limitation	FTA C 4220.1F, IV, 2.e.(12)	19			19	
16	Written Procurement Selection Procedures	FTA C 4220.1F, III, 3.a.; VI, 2.e.	19			19	
17	Solicitation Prequalification Criteria	FTA C 4220.1F, VI, 1.c.(1)(2)(3)			19	19	
18	Award to Responsible Contractors	FTA C 4220.1F, VI, 8.b.	19			19	
19	Sound and Complete Agreement	FTA C 4220.1F, IV, 2.b (6)2; IV, 2.b.(6)4	19			19	
20	No Splitting [Micro-purchase]	FTA C 4220.1F, VI, 3.a.(2)(b)	19			19	
21	Fair and Reasonable Price Determination [Micro-purchase]	FTA C 4220.1F, VI, 3.a.(2)(c)	19			19	
22	Micro-Purchase Davis Bacon	FTA C 4220.1F, VI, 3.a.(1)			19	19	
23	Price Quotations[Small Purchase]	FTA C 4220.1F, VI, 3.b.(2)			19	19	
24	Clear, Accurate, and Complete Specification	FTA C 4220.1F, III, 3.a.(1)(b)(d); VI, 2.a.; VI, 3.c.(2)(c)	19			19	
25	Adequate Competition - Two or More Competitors	FTA C 4220.1F, VI, 3.c.(b); VI, 3.d.(2) (c)	19			19	
26	Firm Fixed Price [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(1)(c)	19			19	

REPORT SUMMARY TABLE

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
27	Selection on Price [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(1)(d)	19			19	
28	Discussions Unnecessary [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(1)(e)	19			19	
29	Advertised/Publicized	FTA C 4220.1F, VI, 3.c.(2)(a)	19			19	
30	Adequate Solicitation	FTA C 4220.1F, VI, 3.c.(2)(b)	19			19	
31	Sufficient Bid Time [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(d)	19			19	
32	Bid Opening [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(e)	19			19	
33	Responsiveness [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(f)	19			19	
34	Lowest Price [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(d)			19	19	
35	Rejecting Bids [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(g)	19			19	
36	Evaluation [RFP]	FTA C 4220.1F, VI, 3.d.(2)(b)(d)	19			19	
37	Price and Other Factors [RFP]	FTA C 4220.1F, VI, 3.d.(2)(e)	19			19	
38	Sole Source if Other Award is Infeasible	FTA C 4220.1F, VI, 3.i.(1); VI, 3.i(b); VI	19			19	
39	Cost Analysis Required [Sole Source]	FTA C 4220.1F, VI, 6.a.	16	3		19	Establish Mgt Controls
40	Evaluation of Options	FTA C 4220.1F, IV, 1.d.; VI, 7.b; V, 7.a.(1)(c)1	18	1		19	Establish Mgt Controls
41	Cost or Price Analysis	FTA C 4220.1F, VI, 6.a.(2); VI, 6.b.; VI, 6.a.(3)	18	1		19	Establish Mgt Controls
42	Written Record of Procurement	FTA C 4220.1F, III, 3.d.	19			19	
43	Exercise of Options	FTA C 4220.1F, V, 7.a.(1)(a)(b)(c)2			19	19	
44	Out of Scope Changes	FTA C 4220.1F, VI, 3.i.(1) (b)	18	1		19	Establish Mgt Controls
45	Advance Payments	FTA C 4220.1F, IV, 2.b.(5)(b)1,2; IV, 2.b.(5)(b)2,b; IV, 2.b.(5)(b)2b	19			19	
46	Progress Payments	FTA C 4220.1F, IV, 2.b.(5)(c)	17	2		19	Establish Mgt Controls
47	Time & Materials Contracts	FTA C 4220.1F, VI, 2.c.(2)(b)			19	19	
48	Cost Plus Percentage of Cost	FTA C 4220.1F, VI, 2.c.(2)(a)	19			19	
49	Liquidated Damages Provisions	FTA C 4220.1F, IV, 2.b.(6)(b)1	19			19	
50	Piggybacking	FTA C 4220.1F, V, 7.a.(2)	18	1		19	Establish Mgt Controls
51	Qualifications Exclude Price [A&E]	FTA C 4220.1F, VI, 3.f.(3); VI, 3.f.(3)(b); VI, 3.h.	19			19	
52	Serial Price Negotiations [A&E]	FTA C 4220.1F, VI, 3.f.(3)	19			19	
53	Bid Security [Construction Over \$100,000]	FTA C 4220.1F, IV, 2.h.(1)(b)	19			19	

REPORT SUMMARY TABLE

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
54	Performance Security [Construction Over \$100,000]	FTA C 4220.1F, IV, 2.h.(1)(b)	19			19	
55	Payment Security [Construction Over	FTA C 4220.1F, IV, 2.h.(1)(c); IV, 2.h.(1)(e)	19			19	
56	Clauses	FTA C 4220.1F, IV, 2.	19			19	
57	Veterans Hiring Preference	FTA C 420.01F, IV, 2.c.(1)(c)			19	19	

ND - Not Deficient

D - Deficient

NA - Not Applicable

DESCRIPTION OF NOT DEFICIENT ELEMENTS

Element 1 – *Written Standards of Conduct*

- (1) The Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.
 - (a) ...no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.
 - (b) The recipient's officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
 - (c) To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the recipient's officers, employees, agents, board members, or by contractors or subrecipients or their agents. [FTA C 4220.1F, III, 1.a,b,c]

Element 2 - *Contract Administration System*

THIRD PARTY CONTRACTING CAPACITY. As part of an FTA recipient's obligation to maintain adequate technical capacity to carry out its project and comply with the Common Grant Rules, the recipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. The Common Grant rules require the recipient to maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements. Many FTA recipients assign contracting duties to technical, financial or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage. [FTA C 4220.1F, III, 3]

Element 3 – *Written Protest Procedures*

- (1) FTA expects each recipient to have appropriate written protest procedures, as part of its requirement to maintain or acquire adequate technical capacity to implement the project.

DESCRIPTION OF NOT DEFICIENT ELEMENTS

- (a) Recipients are required “to notify FTA when they receive a third party contract protest to which this circular applies, and to keep FTA informed about the status of the protest.
- (b) The protester must exhaust its administrative remedies by pursuing the recipient’s protest procedures to completion before appealing the recipient’s decision to FTA.
- (c) The protestor must be an “interested party,” that is, “a party that is an actual or prospective bidder whose direct economic interest would be affected by the award or failure to award the third party contract at issue.
- (d) FTA will limit its review of third party contract protests as follows:
 - 1. The recipient does not have protest procedures, or
 - 2. Has not complied with its protest procedures, or
 - 3. Has not reviewed the protest when presented an opportunity to do so.
 - 4. When a Federal law or regulation is involved...”FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA’s overall public transportation program.
- (e) The protestor must deliver its appeal to the FTA Regional Administrator...within five (5) working days of the date when the protestor has received actual or constructive notice of the recipient’s final decision,” or ...”when the protestor has identified other grounds for appeal to FTA,” such as “the recipient’s failure to have or failure to comply with its protest procedures or failure to review the protest.” [FTA C 4220.1F, VII, 1.a.b.]

Element 4 – Prequalification System

A recipient may prequalify people, firms, or products for participation in its procurements provided that:

- (a) ...lists used in acquiring property and services are current.
- (b) ...lists include enough qualified sources to ensure maximum full and open competition.
- (c) The recipient permits potential bidders or proposers to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. Evaluations for prequalification, however, need not be accelerated or truncated. FTA does not require a recipient to hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation. [FTA C 4220.1F, VI, 1.a,b,c]

Element 5 – Procedures for Ensuring Most Efficient and Economic Purchase

Proposed procurements should be reviewed to avoid the purchase of property and services the recipient does not need (including duplicative items and unnecessary options)....Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase... [FTA C 4220.1F, IV, 1.b]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

Element 8 - *A&E Geographic Preference*

Geographic location may be a selection criterion [in procurements for architectural and engineering (A&E) services] provided an appropriate number of qualified firms are eligible to compete for the contract, given the nature and size of the project. [FTA C 4220.1F, VI, 2.a.(4)(g)]

Element 9 – *Unreasonable Qualification Requirements*

Unreasonable requirements placed on bidders or offerors in order for them to qualify to do business. [FTA C 4220.1F, VI, 2.a.(4)(a)]

Element 10 – *Unnecessary Experience and Excessive Bonding*

Unnecessary experience and excessive bonding requirements...FTA does not require any bonding for rolling stock, services, maintenance operations, or any contracts other than construction.... [FTA C 4220.1F, IV, 2.b.h.(1)]

Element 12 – *Arbitrary Action*

Taking any arbitrary action in the procurement process. [FTA C 4220.1F, VI, 2.a.(4)(j)]

Element 13 – *Brand Name Restrictions*

Example of situation restrictive of competition: Specifying only a 'brand name' product instead of allowing an 'or equal' product to be offered or failing to specify the brand name product's salient characteristics. [FTA C 4220.1F, VI, 2.a.(4)(f)]

- (a) Detailed product specifications should be avoided if at all possible in favor of performance specifications. [FTA C 4220.1F, VI, 2.a.(1)]
- (b) When it is impractical or uneconomical to make a clear and accurate description of the technical requirements of the property... a 'brand name or equal' description may be used as a means to define the performance or other salient characteristics of a specific type of property. The recipient, however, must state the salient characteristics of the named brand that offerors must provide. [FTA C 4220.1F, VI, 2.a.(3)]

Element 14 – *Geographic Preference*

Example of situation restrictive of competition: Specifying statutorily or administratively imposed in-State or local geographical preferences or evaluating bids and proposals in light of such in-State or local geographical preferences. Specifically, an FTA recipient is prohibited ...from limiting their bus purchases to in-State dealers. [FTA C 4220.1F, VI, 2.a.(4)(g)]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

Element 15 – *Period of Performance Limitations*

- (a) To comply with 49 U.S.C 5325 (e)(1), a multi-year third party contract to purchase additional rolling stock and replacement parts may not have options that extend more than five years after the date of the original contract.
- (b) FTA interprets this five-year period as covering the recipient's rolling stock and replacement needs from the first day when the contract becomes effective to those at the end of the fifth year. This means that the contract may not encompass more rolling stock and replacement parts than the recipient needs within five years. The five-year rule does not mean delivery, acceptance, or even fabrication must be completed in five years – only that a contract is limited to purchasing no more than the recipient's rolling stock or replacement parts needs for five years based on the effective date of the contract. [FTA C 4220.1F, IV, 2.e.(12)]

Element 16 – *Written Procurement Selection Procedures*

The Common Grant Rule...requires the recipient to have written procurement procedures. [FTA C 4220.1F, III, 3.a.]

The Common Grant Rules require that each solicitation provide for the following...Identify all factors to be used in evaluating bids or proposals. FTA C 4220.1F, VI, 2.e.]

Element 18 - *Award to Responsible Contractors*

A recipient may award a contract ...only to a 'responsible' contractor capable of successfully performing under the terms and conditions of the contract. To determine responsibility, the recipient must consider the following criteria before awarding the contract:

- (1) Integrity. The contractor's integrity;
- (2) Public Policy. The contractor's compliance with public policy;
- (3) Past Performance. The contractor's past performance;
- (4) Financial and Technical Resources. The contractor's financial and technical resources, and;
- (5) Debarment/Suspension. Contractor's status with respect to DOT regulations, 'Government wide Debarment and Suspension (Nonprocurement),' 49 CFR Part 29. [FTA C 4220.1F, VI, 8.b.]

Element 19 - *Unreasonable Qualification Requirements*

Example of situation restrictive of competition: "Unreasonable requirements placed on bidders or offerors in order for them to qualify to do business" [FTA C 4220.1F, VI, 2.a. (4) (a)]

Element 20 – *No Splitting [Micro-purchases]*

...there should be...no splitting of procurements to avoid competition. [FTA C 4220.1F, VI, 3.a.]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

(c) The Common Grant Rule...advises the recipient to describe technical requirements in terms of ‘functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. [FTA C 4220.1F, III, 3.a.(1)(d)]

(d) In order for sealed bidding to be feasible, the following conditions should be present: A complete, adequate, and realistic specification or purchase description is available. [FTA C 4220.1F, VI, 3.c.(1)(a)]

If this procurement method is used...the invitation for bids will include any specifications and pertinent attachments...in order for the bidder to properly respond. [FTA C 4220.1F, VI, 3.c.(2)(c)]

Element 21 – *Fair and Reasonable Price Determination*

FTA’s only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made this determination. [FTA C 4220.1F, VI, 3.a.(2)(c)]

Element 24 - Clear, Accurate, and Complete Specification

(a) Each solicitation must provide a clear and accurate description of the technical requirements for the property or services to be procured. [FTA C 4220.1F, VI, 2.a.]

(b) In competitive procurements, the description may not contain features that unduly restrict competition. [FTA C 4220.1F, III, 3.a.(1)(b)]

(c) The Common Grant Rule ... advises the recipient to describe technical requirements in terms of ‘functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.’ [FTA C 4220.1F, III, 3.a.(1)(d)]

(d) In order for sealed bidding to be feasible, the following conditions should be present: A complete, adequate, and realistic specification or purchase description is available. [FTA C 4220.1F, VI, 3.c.(1)(a)]

(e) If this procurement method is used...the invitation for bids will include any specifications and pertinent attachments...in order for the bidder to properly respond. [FTA C 4220.1F, VI, 3.c.(2)(c)]

Element 25 – *Adequate Competition - Two or More Competitors*

In order for sealed bidding to be feasible, the following conditions should be present: ...Two or more responsible bidders are willing and able to compete effectively for the business. [FTA C 4220.1F, VI, 3.c.(1)(b)]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

A Competitive proposal is a procurement method normally conducted with more than one source submitting an offer or proposal. [FTA C 4220.1F, VI, 3.d.(2)(c)]

Element 26 – *Firm Fixed Price [Sealed Bid]*

...the procurement lends itself to a firm fixed price contract. [FTA C 4220.1F, VI, 3.c.(1)(c)]

Element 27 – *Selection on Price [Sealed Bid]*

...the selection of the successful bidder can be made on the basis of price and those price-related factors included in the solicitation. [FTA C 4220.1F, VI, 3.c.(1)(d)]

Element 28 – *Discussions Unnecessary [Sealed Bid]*

No discussion with bidders is needed. [FTA C 4220.1F, VI, 3.c.(1)(e)]

Element 29 – *Advertised/Publicized*

...sealed bidding (is) a procurement method in which bids are publicly solicited. FTA C 4220.1F, VI, 3.c.]

The invitation for bids will be publicly advertised. [FTA C 4220.1F, VI, 3.c.(2)(a)]

Procurement Procedures. The following procedures apply to procurements by competitive proposals: (a) Publicity. The request for proposals is publicly advertised. [FTA C 4220.1F, VI, 3.d.(2)(a)]

Element 30 – *Adequate Solicitation*

Bids shall be solicited from an adequate number of known suppliers... [FTA C 4220.1F, VI, 3.c.(2)(b)]

Procurement Procedures. The following procedures apply to procurements by competitive proposals: (c) Adequate Sources. Proposals are solicited from an adequate number of qualified sources. [FTA C 4220.1F, VI, 3.d.(2)(c)]

Element 31 – *Sufficient Bid Time [Sealed Bid]*

The Common Grant Rule for governmental recipients acknowledges sealed bidding to be a generally accepted procurement method...Procurement using sealed bids is appropriate if: ...Bidders are allowed sufficient time to prepare bids before the date of bid opening. [FTA C 4220.1F, VI, 3.c.(2)(d)]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

Element 32 – *Bid Opening [Sealed Bid]*

All bids will be publicly opened at the time and place prescribed in the invitation for bids. [FTA C 4220.1F, VI, 3.c.(2)(e)]

Element 33 – *Responsiveness [Sealed Bid]*

The Common Grant Rule for governmental recipients acknowledges sealed bidding to be a generally accepted procurement method...Procurement using sealed bids is appropriate if: ...A firm fixed price contract is...awarded to the lowest responsive and responsible bidder. [FTA C 4220.1F, VI, 3.c.(2)(f)]

Element 35 – *Rejecting Bids [Sealed Bid]*

Any or all bids may be rejected if there is a sound, documented business reason. [FTA C 4220.1F, VI, 3.c.(2)(g)]

Element 36 – *Evaluation [RFP]*

If this procurement method is used the following requirements apply: ...

- (a) All evaluation factors will be identified in the procurement documents along with their relative importance; numerical or percentage ratings or weights, however, need not be disclosed... [FTA C 4220.1F, VI, 3.d.(2)(b)]
- (b) The recipient will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees. [FTA C 4220.1F, VI, 3.d.(2)(d)]

Element 37 – *Price and Other Factors*

If this procurement method is used the following requirements apply: ...Award will be made to the responsible firm whose proposal is most advantageous to the recipient's program with price and other factors considered. [FTA C 4220.1F, VI, 3.d.(2)(e)]

Element 38 - *Sole Source if Other Award is Infeasible*

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies. [FTA C 4220.1F, VI, 3.i.(1)]

Element 42 - *Written Record of Procurement*

The Common Grant Rules require the recipient to maintain...written records detailing the history of each procurement, as follows:

DESCRIPTION OF NOT DEFICIENT ELEMENTS

- a. Procurement Method. ...the rationale for the method of procurement, including a sole source justification for any acquisition that does not qualify as competitive;
- b. Contract Type. ...state the reasons for selecting the contract type (fixed price, cost reimbursement, etc.);
- c. Contractor Selection. ...state the reasons for contractor selection or rejection... include a written responsibility determination for the successful contractor.
- d. Cost or Price. Each recipient must evaluate and state its justification for the contract cost or price.” [FTA C 4220.1F, III, 3.d.(1)]

Element 45 – Advance Payments

Advance payments are payments made to a contractor before the contractor incurs costs in the performance of the contract. The following principles and restrictions apply:

- (a) Use of FTA Funds Prohibited. FTA does not authorize the use of Federal assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable....A recipient that seeks to use FTA or local share funds to support advance payments should contact its Regional Office to obtain FTA concurrence. [FTA C 4220.1F, IV, 2.b.(5)(b).1,2]
- (b) Customary Advance Payments. FTA concurrence is required only when advance payment or payments *customarily required* in the market place exceed \$100,000. [The circular notes that advance payments falling into this category would include such things as utility services, and subscriptions to newspapers and magazines.] [FTA C 4220.1F, IV, 2.b.(5)(b)2,b]

A contract change that is not within the scope of the original contract is considered a sole source procurement.... [FTA C 4220.1F, VI, 3.i.(1)(b)]

Element 48 - Cost Plus Percentage of Cost

The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost and percentage of construction cost methods of contracting. [FTA C 4220.1F, VI, 2.c.(2)(a)]

Element 49 - Liquidated Damages

Delay. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion and the extent or amount of such damages would be difficult or impossible to determine. The rate and measurement period must be specified in the third party contract and may not be excessive. The assessment for damages is usually established at a specific rate per day for each day beyond the contract’s delivery date or performance period, but a measurement period other than a day may be established if appropriate. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise. [FTA C 4220.1F, IV, 2.b.(6)(b)1]

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Element 51 - *Qualifications Exclude price [A&E]*

When Required. Qualifications-based proposal procedures are required for projects related to or leading to a construction project. These procedures must be used not only when contracting for architectural and engineering services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. Recipients shall use qualifications-based competitive proposal procedures [i.e. Brooks Act Procedures when contracting for A&E services as defined in 40 U.S.C. Sections 1101-1104 and 49 U.S.C. Section 5325(b)(1)]. When this procurement method is used, the following requirements apply: [FTA C 4220.1F, VI, 3.f.(3)]

- (a) Qualifications. An offeror's qualifications must be evaluated.
- (b) Price. Price is excluded as an evaluation factor. [FTA C 4220.1F, VI, 3.f.(3)(b)]
- (c) Design-Build. An FTA recipient must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act...when the preponderance of the work to be performed is considered to be for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related A&E services. (A&E) services...qualifications-based competitive proposal procedures may not be used to procure design-build services when the preponderance of the work to be performed are services other than those listed in the previous sentence, unless required by State law." [FTA C 4220.1F, VI, 3.h.]

Element 52 – *Serial Price Negotiations [A&E and Other Services]*

When this procurement method is used, the following requirements apply:

- (a) Most Qualified. Negotiations are conducted with only the most qualified offeror; and
- (b) Next Most Qualified. Failing agreement on price, negotiations with the next most qualified offeror and, if necessary, negotiations with successive offerors in descending order must be conducted until a contract award can be made to the offeror whose price the recipient believes is fair and reasonable. [FTA C 4220.1F, VI, 3.f.(3)]

Element 53 - *Bid Security [Construction over \$100,000]*

Bonding. The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. [FTA C 4220.1F, IV, 2.h.(1)(a)]

Element 54 - *Performance Security [Const. Over \$100,000]*

Bonding. The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA's bonding policies are as follows:

DESCRIPTION OF NOT DEFICIENT ELEMENTS

- (a) Performance Bond. Both FTA and the Common Grant Rules require a performance bond on the part of the contractor for 100 percent of the contract price. A ‘performance bond’ is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract. [FTA C 4220.1F, IV, 2.h.(1)(b)]

Element 55 - *Payment Security [Const. Over \$100,000]*

Bonding. The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA’s bonding policies are as follows:

- (a) Payment Bond. A ‘payment bond’ is one executed in connection with a contract to assure payment as required by law of all people supplying labor and material in the execution of the work provided for in the contract. FTA has determined the following payment bond amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
- (1) Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (2) More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) More Than \$5 Million. Two and a half million dollars if the contract price is more than \$5 million.” [FTA C 4220.1F, IV, 2.h.(1)(c)]

A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project, may submit its policy and rationale to its FTA Regional Office for approval. [FTA C 4220.1F, IV, 2.h.(1)(e)]

Element 56 - *Statutory and Regulatory Requirements (Clauses)*

The FTA Circular states: “FTA’s Master Agreement contains a current but not all inclusive and comprehensive list of statutory and regulatory requirements that may affect a recipient’s procurement (such as Disadvantaged Business Enterprise (DBE) and, Clean Air requirements). Recipients are responsible for evaluating these requirements for relevance and applicability to each procurement.” [FTA C 4220.1F, IV, 2]

OMNITRANS
RESPONSE DATED OCTOBER 22, 2015

ITEM # E5

DATE: March 10, 2016

TO: Committee Chair Ed Graham and
Members of the Administrative and Finance Committee

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Maurice A. Mansion, Treasury Manager

SUBJECT: FISCAL YEAR 2016-2017 BUDGET ASSUMPTIONS

FORM MOTION

Recommend the Board of Directors approve the assumptions listed below to develop the Operating and Capital Budgets for Fiscal Year 2016 - 2017.

BACKGROUND

A critical component in the development of the Agency's budget is the development of budget assumptions. This information was obtained through research performed and includes searches on the Internet, review of Agency data, including the Service Plan assumptions and the Teamsters' and the Amalgamated Transit Union's Memorandums of Understanding.

Maintenance and Administrative/Support Unit (Teamsters)	Effective Date
MOU End	June 30, 2016
Wage increase: Based on contract negotiation	2.75%
Step progression increase	MOU qualifications
Benefits Package: Package is \$525.00 per pay period; maximum of \$12,600/year.	9/01/2015
Source: MOU effective July 1, 2013 through June 30, 2016	
Negotiations to start.	

Coach Operators (ATU)	Effective Date
MOU End	March 31, 2016
Wage increase: Based on contract negotiation	2.75%
Step progression increase	MOU qualifications
Benefit Package: Package is \$537.50 - Single/Two party per pay	9/01/2015
Period; \$572.50 - Family; Maximum of \$12,900/year and \$13,740 /year.	
Source: MOU effective April 1, 2013 through March 31, 2016	
Currently in negotiations.	

Management /Confidential	Effective Date
Pay for Performance: In accordance with Personnel Policy Manual	FY 2016-17
Benefit Package: In accordance with Personnel Policy Manual	FY 2016-17
Source: Omnitrans Human Resources	

Insurance	Effective Date
Workers' Compensation SIR/IBNR – Stays constant based on Actuarial Analysis	Fiscal Year 2016
SDI: .9%	FY 2016-17
FICA-Medicare 1.45%	FY 2016-17
Source: Omnitrans Finance Department	

CalPERS	Effective Date
12.464% Employer Contribution (2% @55 Plan and 2% @62 Plan) – Miscellaneous Plan	FY 2016-17
Employee contribution covered in employees' benefits package per Personnel Policy Manual and MOU agreements.	
Source: Omnitrans Finance Department	

Unemployment	Effective Date
Annual average expected to remain at 5.9%	December 2015
Source: U.S. Department of Labor	
Riverside/San Bernardino/Ontario CA Metropolitan Statistical Area	
http://www.bls.gov/eag/eag.ca_riverside_msa.htm	

Energy /Fuel Costs	Effective Date
LNG Fuel: \$.6550/gallon for FY 16-17	FY 2016-17
Source: Finance Department	
Unleaded Fuel: \$2.48/gallon for FY 16-17	FY 2016-17
Source: Finance Department	

Consumer Price Index	Effective Date
Inflation of about 3.3%	January 2016
Source: U.S. Department of Labor	
http://www.bls.gov/eag/eag.ca_riverside_msa.htm	

CONCLUSION

Approval of the budget assumptions will allow Omnitrans to develop the budget for Fiscal Year 2017, which will be presented to the Board of Directors for approval in May.

PSG:DW:MM